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CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
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Staff Report: 11/22/02
Hearing Date: 12/11/02
CDP Approved: 11/16/94
Extension Denied: 6/07/99
Previous Hearing: 6/10/02
Staff: MKH
Commission Action:

STAFF REPORT
CHANGED CIRCUMSTANCES and PROJECT AMENDMENTS

Application No. A-4-STB-93-154-CC, and --A2 (ARCO Dos Pueblos Golf Links)

Applicant: CPHPAH Dos Pueblos Associates, LLC; Capital Pacific Holdings, Inc.; Patriot American Hospitality, Inc.; Makar Enterprises, Inc.; Richard W. Hollis, Jr.

Agent: Andriette Culbertson, Culbertson, Adams, Inc.; Steven Kaufmann, Attorney, Richard, Watson & Gershon; Richard W. Hollis, Jr., President, CPHPAH Dos Pueblos Associates, LLC

Project Location: Naples area of Gaviota Coast, approximately 1.5 miles west of U.S. Highway 101/Winchester Canyon Exit (Goleta), seaward of and adjacent to U.S. Highway 101, Route 1, Box 275, unincorporated Santa Barbara County.

Project Description: 18-hole and 9-hole golf courses with clubhouse and associated development, described on page 19, including proposed amendments set forth on page 20.

Purpose of Hearing: Hearing on changed circumstances to evaluate the consistency of the proposed project with the applicable policies and provisions of the certified Santa Barbara County Local Coastal Program (LCP) and with the coastal access and recreation policies of Chapter 3 of the Coastal Act. The hearing also includes proposed amendments to the previously approved project description.

Motion and Resolution: Page 3

Summary of Staff Recommendation: Staff recommends **denial** of the proposed project. Changed circumstances since Commission approval (November 16, 1994) of CDP A-4-STB-93-154 have rendered the proposed development inconsistent with applicable requirements of Santa Barbara County's certified LCP, including policies and provisions protective of environmentally sensitive species and habitats.

The California red-legged frog, tidewater goby, southern tarplant, white-tailed kite, and monarch butterfly have been identified on the subject site in previously unknown locations or populations, or are utilizing the site in ways that they previously did not (for example for nesting by the white-tailed kite). These facts either did not exist or were

not known to the Commission at the time of the Commission's November 16, 1994 approval of former CDP A-4-STB-93-154, or at the time of the Commission's June 7, 1999 hearing on the applicants' request to extend the previous permit. In addition, some of these species have received state or federal protected status, or elevated sensitive species status since Commission approval of the permit.

Other changed circumstances include the discovery of new wetlands after oil and gas facilities were removed from the site in December 1997 and January 1998. An appeal to the Commission of a County-approved final CDP for the proposed project, including changes to the project that were reviewed by the County through a substantial conformity determination, is pending. Most of the changes addressed in the appealed permit have also been proposed by the applicants as amendments to the presently proposed project. A second appeal is also pending regarding remediation of contaminated soils on the site. These appeals will be dealt with at a separate hearing.

Substantive File Documents:

Santa Barbara County certified Local Coastal Program (LCP); Guide to the California Environmental Quality Act, 1999 Edition, Remy, Thomas et al, Solano Press Books; ACOE/NRCS wetland delineation documents for Arco Dos Pueblos site (on file); Recovery Plan for the California Red-legged Frog (*Rana aurora draytonii*). U.S. Fish and Wildlife Service, Portland, Oregon, viii + 173 pp.

Staff Note: The correspondence received by staff concerning this project is extensive and due to the size of exhibit package distributed with this report, will be distributed separately in the subsequent addendum.

In addition, staff notes that the applicants and the applicants' consultants have worked with staff since the Commission's June 10, 2002 hearing to identify potential solutions to the impacts to sensitive resources on the Arco Dos Pueblos site that have been identified in this report. Staff met several times with the applicants' agents and consultants and attended site visits, including site visits in both Monterey and Santa Barbara County to further evaluate the resources of concern. Staff ultimately concluded, however, despite the best efforts of all parties to explore potential alternatives and mitigation measures, that without a substantial redesign of the golf course the project will have significant, impermissible and potentially irreversible, adverse impacts on Environmentally Sensitive Habitat Area (ESHA) and sensitive species on the Arco Dos Pueblos site. These impacts include the removal of nesting habitat relied on by at least two pairs of white-tailed kites, a raptor afforded specific protections by statute as a California Fully Protected Species. The applicants have stated that they cannot accept a redesign of the golf course to protect the identified nesting habitat in large part because the nesting areas are located in the midst of the blufftop stretch they require for the spectacular vistas that would set apart a "championship" course from the more mundane course that they apparently believe result if the nesting areas were not part of the golf course footprint. Thus, a redesign that would relocate the affected 16th, 17th, and 18th proposed fairways may be feasible,

but would be unacceptable to the applicants. The impacts on ESHA that the project will otherwise have in the professional opinion of the Commission's staff ecologist render the project inconsistent with the policies and provisions of the Coastal Act and with the requirements of the County's certified LCP, specifically with policies and provisions set forth in the LCP that are protective of ESHA. Therefore, while appreciative of the applicants' efforts, staff finds it necessary to recommend that the Commission deny the project as proposed.

SECTION I. MOTION AND RESOLUTION

MOTION: ***I move that the Commission approve Coastal Development Permit No. A-4-STB-93-154-CC-A2 as proposed by the applicants.***

STAFF RECOMMENDATION of APPROVAL:

Staff recommends a **NO** vote. Failure of this motion will result in the denial of the permit, including the applicant's proposed amendments to the permit, and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby **denies** Coastal Development Permit A-4-STB-93-154-CC, including the amendments to the permit proposed by the applicant pursuant to application A-4-STB-93-154-A2 and adopts the findings set forth below on grounds that the development, including the proposed amendments, does not conform with the policies and provisions of the certified Local Coastal Program of Santa Barbara County or with the public access and recreation policies of Chapter 3 of the Coastal Act. The proposed project and amendments thereto do not comply with the California Environmental Quality Act because there are feasible mitigation measures and/or alternatives that would substantially lessen the significant adverse effects of the development on the environment.

SECTION II. FINDINGS

1.0 BACKGROUND

1.1 Standard of Review

Santa Barbara County's certified Local Coastal Program is the legal standard of review for the Commission's hearing on changed circumstances. The certified LCP is also the standard of review for the amendments to the approved project that the applicants now propose. The project is located between the first public road paralleling the sea and the shoreline, therefore the project must also conform with the public access and recreation

policies of the Coastal Act (Public Resources Code 30603 and 30604) in addition to the policies and provisions of the certified LCP.

1.2 Permit History

The Arco Dos Pueblos project site was originally given a Coastal Dependent Industry (M-CD) land use and zoning designation in the Santa Barbara County Local Coastal Program (LCP).[1] This designation was based upon the existing industrial facilities on the site, and the long-standing use of the site for oil and gas production dating from the mid-1940s.

Arco's petroleum production facilities were deemed non-conforming when the County adopted the South Coast Consolidation Planning Area Policy in 1990. In 1991, the site was redesignated and rezoned Agriculture II (AG-II), 100-acre minimum as part of Major LCP Amendment 3-90 which consolidated oil and gas sites at two locations within the South Coast Consolidation Planning Area. Through these measures the County sought to limit the sprawl of energy facilities along the Gaviota coast.

At the time the Commission certified LCPA 3-90, no specific proposal for a golf course had been developed. Therefore, neither the County nor the Commission had evaluated the specific, relative impacts of a golf course versus agricultural or other recreational land uses, or compared the impacts of a golf course on the site with the impacts of the baseline residential uses authorized for the subject site under the redesignation and rezoning. In certifying the Agricultural land use and zoning designation for the property, the Commission acknowledged the intent of ARCO (Arco Oil and Gas owned the site at the time) to potentially develop a golf course on the site, and specifically indicated that the redesignation of the land as Agriculture, while not authorizing a golf course without further review and approvals, did not preclude the possible future use of the site for a golf facility.

A golf course is a conditionally permitted use in the County's LCP on lands zoned Agriculture II. Other permitted and conditionally permitted uses on lands zoned AG-II are shown in Exhibit 54 (which contains relevant pages from the certified Coastal Land Use Plan and the Coastal Zoning Ordinance).

On October 25, 1991, ARCO applied to Santa Barbara County for a Conditional Use Permit and Coastal Development Permit to construct two golf courses and appurtenant facilities on the site. The Conditional Use Permit (CUP 91-CP-085) was approved by the County in August 1993 and was appealed to the Commission by Surfrider Foundation thereafter.

The Coastal Commission determined that the Surfrider appeal raised a substantial issue with respect to conformity with the County's certified LCP and asserted coastal development permitting jurisdiction over the project (November 17, 1993 hearing). On

[1] The County's LCP was certified in 1982.

April 13, 1994 the Commission conducted a *de novo* public hearing on the merits of the appeal and denied the project. The applicant requested a reconsideration of the Commission's action. On July 3, 1994 the Commission voted to grant reconsideration of the previous denial of the permit. The Commission approved CDPA-STB-93-154 on November 16, 1994, subject to special conditions requiring the consolidation of the antiquated substandard lots (known as a portion of the former Naples Townsite) comprising a portion of the western end of the site and restricting the future redivision of the resultant two large parcels, the provision of vertical and lateral access easements offered by the applicants, and specifically incorporating all of the County's conditions of approval of the previous CUP into the Commission's permit. The Commission adopted revised findings reflecting this decision on February 8, 1995.

Surfrider Foundation petitioned for a writ of mandate in Santa Barbara County Superior Court challenging the Coastal Commission's approval of the permit. The trial court denied Surfrider Foundation's petition and the Court of Appeal upheld that decision on January 27, 1997. The Court of Appeal found that the Commission's findings and decisions regarding the project were legally valid.

During the litigation, the two-year time limit on the original Coastal Development Permit approval for the project was tolled. Consequently, the first term of the permit was extended until January 28, 1999. On January 7, 1999 the applicants submitted a timely request to extend the permit.

In addition, before the expiration of the permit for the golf course, the applicants also processed other permits for various aspects of the oil and gas facility abandonment and removal. The project description for the golf course permit states that separate permits for the abandonment and removal of the former Arco oil and gas production facilities, and the subsequent cleanup afterward, would be processed and issued as separate approvals by the Santa Barbara County Planning Department, Energy Division. Santa Barbara County thereafter approved and issued two Coastal Development Permits for various aspects of the abandonment and removal of oil and gas processing facilities and other structures on the site. The authorized development was completed in December, 1997 and January, 1998. The County approved a third CDP for contaminated soil remediation. The first two of the three permits were for removal of the physical facilities, which was completed in December of 1997 and January of 1998. The third CDP addressed contaminated soils discovered on the site after the removals (ARCO refers to the cleanup as a "Remedial Action Plan"), and was approved in 1998.

The first two permits were not appealed to the Commission. The third CDP, concerning remediation of contaminated soils was approved by County staff in 1998 and timely appealed to the Commission thereafter. Therefore, the CDP for the ARCO Remedial Action Plan was not issued, and the appeal is pending.

ARCO also proposed a number of project modifications to the golf course project description, which the County authorized through a substantial conformity determination in 1998. The County approved a final CDP for the project, including the project

changes that had been processed through substantial conformity determination, on December 3, 1998. This CDP was timely appealed to the Commission, and is also pending. The latter appeal addresses similar project modifications to those the applicants presently propose to the project that was the subject of the previous permit, CDP A-4-STB-93-154.

On November 9, 1998 ARCO submitted an application to the Coastal Commission for amendments to CDP A-4-STB-93-154, encompassing the changes to the project description that were approved by County staff pursuant to the pending appeals. On December 3, 1998 the County approved the final CDP for the proposed project, including the changes that were the subject of the amendment application. The Commission's Ventura District Office received a notice of final action on December 4, 1998, and staff subsequently received a timely appeal. Staff received the administrative record from the County on December 18, 1998.

During this period, according to the applicants' agents, some or all of the present applicants closed escrow with the former permittee, ARCO, for purchase of the Dos Pueblos golf course site. CDP A-4-STB-93-154 was transferred from ARCO to the applicants on March 2, 1999.

1.3 Changed Circumstances

The applicants' representatives have submitted a lengthy and detailed argument that the scope of Commission review is limited in this proceeding. Therefore, the Commission finds that a detailed response is necessary.

The Commission denied the applicant's request for an extension of the subject permit in June 1999. The applicable regulation states:

> ***If three (3) commissioners determine that there are changed circumstances that affect consistency of the development with Chapter 3 policies of the Coastal Act or with a certified LCP if applicable, the extension shall be denied and the development shall be set for a full hearing of the commission pursuant to Subchapter 1 of these regulations. However, the applicant shall not be required to file a new permit application but instead, shall submit any information that the executive director determines is necessary to evaluate the effect of the changed circumstances. (14 Cal. Code of Regulations, Section 13169(d)(1)).***

The "full hearing of the commission" referred to in the regulation is a hearing that addresses whether, in light of changed circumstances since the date of Commission approval of the subject project, the project meets the standards of review set forth in Section 30604 of the Coastal Act. With the exception of the findings of consistency that may be affected by changed circumstances, the Commission's 1995 findings, adopted after the Commission approved the project in November 1994, are final and binding and may not be reconsidered. As discussed below, those findings were challenged in court

by Surfrider Foundation, and were upheld by the Court of Appeal. This is both consistent with the regulation cited above and the common law principles of law of the case and *res judicata*, which direct that an agency may not take an action that conflicts with the Court of Appeal's decisions regarding the same matter, except as expressly authorized by statute. Therefore the Commission's findings regarding consistency with the County LCP policies concerning conversion of agricultural land and preservation of prime agricultural soil, and provisions that require preservation of stable urban boundaries and ensure adequate services for new development, continue to apply.

Notwithstanding those issues for which there are no changed circumstances, the Commission must evaluate the project, including new information regarding the effect of the changed circumstances, to ensure consistency with the certified Santa Barbara LCP. As discussed in detail below, the following changed circumstances have been identified on the project site since approval of CDP A-4-STB-93-154 in November 1994:

- Presence of California Red-legged Frog
- Presence of Tidewater Goby
- Increased population size of Monarch Butterflies
- Increased population size and habitat area of Southern Tarplant
- Nesting habitat of White-tailed Kite
- Previously unidentified wetlands that formed after energy facilities were removed
- Previously unidentified contaminated soil areas (separately addressed in pending appeal)

Applicants' Arguments Regarding Scope of Commission Review

The applicants have made several legal arguments related to the scope of the Commission's jurisdiction to review the golf course project. The Commission does not agree with these arguments, for the reasons briefly discussed below. The Commission finds that it has jurisdiction to evaluate all of the environmental impacts of the project that are addressed in these findings.

The first argument the applicants make is that the Commission may not review or evaluate the impacts of the project that relate to changes in the biological resources on the site that have occurred since the last Commission hearing on the project in June 1999. The applicants argue that the only "changed circumstance" that the Commission may consider is the presence on the site of red-legged frogs, a threatened species under the federal Endangered Species Act (ESA). This is the changed circumstance that was the basis for the Commission's denial of the request for extension of the permit in June 1999. The applicants argue that after a finding of changed circumstances, at the new hearing on the project, the Commission may not consider any additional changed circumstances that have subsequently occurred, in determining whether the project complies with the LCP. The Commission disagrees with this position. Neither

the Coastal Act nor its implementing regulations contain such a limit on the Commission's review of a project in this situation.

In this case, the Commission found that the presence of threatened red-legged frogs was a changed circumstance in June 1999. The applicants then developed a habitat conservation plan that was reviewed and eventually approved by the U.S. Fish and Wildlife Service. Only after obtaining approval of the habitat conservation plan in January 2002, the applicant had the necessary authorization from the U.S. Fish and Wildlife Service to proceed with the project in a manner that would not jeopardize the survival of the threatened red-legged frog. The approved habitat conservation plan embodies the applicants' proposal for addressing the changed circumstance – the red-legged frogs – that was identified at the June 1999 hearing. However, in the course of reviewing the reports prepared by the applicants' consultants after the June 1999 hearing, as well as information obtained by Santa Barbara County, and other information that was obtained after the June 1999 hearing, the Commission has determined that there are additional changed circumstances involving the biological resources at the site and the impacts of the proposed project on those resources that have occurred since the June 1999 denial of the permit extension. In deciding at this time whether to approve the permit, the Commission may properly evaluate the additional changed circumstances on the site that have occurred since the Commission's last hearing on the project in June 1999. There is no restriction that limits the Commission's review to only the changed circumstance that was identified in June 1999 when the Commission denied the permit extension. Rather, under applicable legal principles the Commission must apply the facts and the law as they exist at the time the Commission makes its decision. Thus, the Commission must now decide whether, with project modifications proposed by the applicant, and in light of the changed circumstances relating to coastal resources on the site that have occurred since the last hearing in June 1999, the project complies with the LCP.

The applicants' second argument regarding the scope of the Commission's review is that the Commission already had the opportunity to review the impacts of the project on raptors, including white-tailed kites, and may not address this now. The applicants assert that when the County initially approved the CDP for the project, potential adverse impacts on raptors, including white-tailed kites, were identified and certain mitigation measures were imposed. Therefore, the applicants argue that the fact that white-tailed kites have nested at the site in the last few years does not represent a changed circumstance and the Commission may not evaluate whether the project complies with the LCP standards applicable to nesting kites. The Commission disagrees because at the time of the hearing on the CDP in 1994 and the hearing on the request for extension of the permit in June 1999, there was no evidence that white-tailed kites nested at the site. The administrative record indicated that white-tailed kites were a "potential" species on the site, but that they were not "documented" to be present. Since, according to the information in the administrative record, kites were not nesting at the site, the consistency of the project with the LCP provisions that protect roosting, nesting and foraging habitat of kites was not evaluated. Because there was no evidence that kites nested at the site in 1994 when the Commission approved the CDP,

there was also no basis for the Commission to impose conditions to require compliance with the white-tailed kite development standards in the LCP. Since there was no evidence that kites were nesting at the site at the time of the Commission's previous hearings on the project in 1994 and in June 1999, the fact that kites have nested at the site in the last few years represents a changed circumstance.

The applicants' third argument regarding the Commission's scope of review relates to whether the LCP protections for white-tailed kites are applicable to the ARCO Dos Pueblos site. The County Land Use Plan identifies kite habitat at one location known as More Mesa. However, a review of the LCP as a whole indicates that, although More Mesa may have been the only known kite habitat at the time the LCP was certified, the LCP requires protection of kite habitat that is found at other locations in the future. The local implementation plan included in the LCP is referred to as the "Coastal Zoning Ordinance." This Ordinance contains Section 35-97, which is entitled "ESH Environmentally Sensitive Habitat Area Overlay District." Habitat of the white-tailed kite is one type of environmentally sensitive habitat that is protected by this Ordinance. Section 35-97.14 of the Ordinance is entitled: "Development Standards for White-Tailed Kite Habitats." The applicable development standards are set forth in paragraphs 1 through 4. Paragraphs 1 through 3 apply to all kite roosting and nesting areas. Paragraph 4, while it does refer to "preserving the ravine and plant communities on More Mesa for nesting and roosting sites", also more generally requires that "the maximum feasible area shall be retained in grassland to provide feeding area for the kites." This latter requirement is not limited to More Mesa.

Furthermore, the Ordinance clearly states that any environmentally sensitive habitat that is discovered after certification of the LCP shall be protected by the Ordinance. Section 35-97.3 is entitled: "Identification of Newly Documented Sensitive Habitat Areas" and states:

> *"If a newly documented environmentally sensitive habitat area, which is not included in the ESH Overlay District, is identified by the County on a lot or lots during application review, the provisions of Secs. 35-97.7 – 35-97.19 shall apply."*

This provision makes it clear that the development standards for kite habitats in Sec. 35-97.14 apply to kite habitat in any location where a project is proposed. Therefore, the Commission disagrees with the applicants' argument that the development standards in the LCP that protect white-tailed kites only apply to kites found on More Mesa.

A final argument that applicants have made is that Commission staff improperly delayed issuance of the CDP for the golf course project until the expiration date passed, and therefore the Commission should be estopped from denying the project at this time. The applicants assert that issuance of CDP A-4-STB-93-154 before the expiration date would have allowed the development to commence and ARCO would not have needed a permit extension. Then the Commission could not have addressed

any changed circumstances, including discovery of red-legged frogs, and could not deny the project based on the existence of changed circumstances. The Commission rejects this argument because, as explained below, the Commission staff did not improperly delay issuance of the CDP.

Commission staff did not issue CDP A-4-STB-93-154 prior to the expiration date of January 28, 1999 because there were unresolved issues regarding whether the project, as modified, complied with the prior to issuance conditions of the permit. The County imposed numerous conditions of approval in its Conditional Use Permit (CUP) for the project, which were also incorporated by reference into the Commission's permit, CDP A-4-STB-93-154, on appeal. The litigation challenging the Commission's CDP was finally resolved in March 1997. Pursuant to the tolling provision of the judgment, the applicant had until January 1999 to vest the permit (a period of 22 months). However, it was not until very close to the end of this period, on December 3, 1998, that the County made its determination that all the prior conditions of approval were satisfied and approved Coastal Development Permit No. 98-CDP-274. Issuance of this CDP is the method the County used, pursuant to its LCP, to make a determination that the project as modified complied with the conditions of approval imposed through the CUP. (The County utilizes a two-permit process – its first discretionary permit approval (the CUP) imposes conditions on the project and its second permit approval (the CDP) determines that the conditions have been met. Pursuant to the County's LCP, both permit decisions are appealable to the Commission). The County's approval of Coastal Development Permit No. 98-CDP-274, which determined that the project as modified complies with the conditions of the CUP, which were also incorporated as conditions of the Commission's CDP, was appealed to the Commission on December 18, 1998. The Commission staff determined that it was not appropriate to issue the permit without the Commission having addressed the unresolved issues concerning compliance with the prior to issuance conditions of the CDP (CDP A-4-STB-93-154).

The appeal was received on December 18, 1998, which did not allow sufficient time for Commission staff to evaluate the appeal, prepare a report and recommendation, mail the report and provide the required public notice of the hearing, in time to schedule it for hearing at the next meeting, which was during the week of January 4, 1999. Therefore, the Commission opened and continued the hearing on the appeal on January 5, 1999. The matter was scheduled for the next Commission hearing, on February 4, 1999. However, CDP A-4-STB-93-154 expired on January 28, 1999; therefore, on January 7, 1999, ARCO applied for an extension of the permit. In January 1999, information was raised regarding presence of threatened red-legged frogs at the site. The Commission subsequently denied the request for extension of the permit based on the presence of threatened red-legged frogs, which constituted a changed circumstance. As explained above, it was reasonable for Commission staff not to issue the permit until the appeal that raised issues regarding compliance with the permit conditions was resolved.

In addition, it appears that ARCO did not have authorization from the County to legally commence construction prior to the expiration date of CDP A-4-STB-93-154. The County made its determination that all its conditions of approval were satisfied on

December 3, 1998, through its approval of Coastal Development Permit No. 98-CDP-274. This CDP was appealed to the Coastal Commission on December 18, 1998. Pursuant to the applicable regulations and the County LCP, the County's approval of the project was suspended during the appeal. Therefore, ARCO did not have the necessary local approval to commence the project prior to the January 28, 1999 (the expiration date of CDP A-4-STB-93-154).

Other evidence of changed circumstances exists as well. Data collected between October 2000 and March 2001, and submitted by the applicants at the request of staff confirmed that thousands of monarch butterflies were using the site by that time. A count of 72,208 total monarch butterflies was made by the applicants' consultants, Althouse and Meade as the result of butterfly counts recorded on site on 28 different dates from October 6, 2000 to March 9, 2001. Evidence also showed that the butterflies were aggregating in a 159-tree eucalyptus grove within the proposed Par 3 course adjacent to Eagle Canyon (north of the railroad) - a location that had not been documented previously. The applicants' consulting biologists, writing to the Commission on behalf of the applicants on February 1, 1999, merely noted that "a few" butterflies were seen on the site, and that the stand (of eucalyptus trees) "in Eagle Canyon near the train tracks is dense enough to support roosting." This stand is likely the grove identified as "Grove J" which is newly identified as an aggregation grove for monarch butterflies. The butterflies were not previously documented to use this grove at the time of the Commission's 1994 approval. [2]

As discussed in detail below, reports prepared by the applicants for the USFWS review and information submitted at the request of Commission staff have identified the presence of tidewater gobies; a significantly increased number and usage pattern of monarch butterflies; new populations and significant numbers of southern tarplant—together with information that southern tarplant is now designated as a California Native Plant Society (CNPS) List 1(b) species; and nesting by at least two pairs of white-tailed kites. The white-tailed kites are designated by Fish and Game Code section 3511 as a fully protected species and as such they cannot be taken at any time by permit or otherwise except for scientific research or to protect livestock. In addition, new wetlands have been formally delineated on site in locations where oil and gas facilities were removed in December of 1997 and January of 1998, as has the presence of contaminated soils left from the use of the site for oil and gas production and related activities.

There is also evidence of the existence of some changed circumstances that would potentially have been relevant to the Commission at the June 1999 permit extension request hearing. The record supporting the Commission's 1994 approval of the former permit only identified the butterflies numbering approximately a maximum of 150, and ranked the use of the site by monarch butterflies as minor (1992 EIR). As noted, the

[2] Commission staff notes that monarch butterflies have been observed by staff on site visits in September 2001, March 2002, and November 2002 and appear to be utilizing the site all year.

applicants have recently submitted reports to the Commission that counted thousands of monarch butterflies utilizing the Eagle Canyon area of the site in the years following the 1999 hearing. The counts were only made by consultants on behalf of the applicants after the June 1999 hearing. In one year, the applicants' consultant counted approximately 70,000 monarch butterflies at the site.

In another example of information concerning changed circumstances not known to the Commission in June, 1999, a rare plant was discovered by the applicants in 1998, before the final County CDP was even issued for the golf course project -- in a new location on the site, and in a significantly larger number than had been documented previously. The administrative record supporting the Commission's approval of the former permit in 1994 only contained evidence that the southern tarplant had been identified in the area proposed for the 18th fairway, and in a population numbering only 20 to 30 individual plants. In 1998, however – almost a year before the Commission's June 1999 hearing on the permit extension request—the applicants documented a new population of southern tarplant, in a different location of the site, numbering approximately 4,500 individual plants. This population would be eliminated by the proposed development.

This information would have identified a changed circumstance concerning the plant had it been made available on or before the date of the Commission's June 1999 hearing. However, this information was not made available to the Commission staff until March of 2002.

In 2002, a Santa Barbara County environmental compliance monitor informed Commission staff that in 1998 he discovered a large population of southern tarplants (later numbered at approximately 4,500) on the site where the clubhouse/parking lot and a portion of the Par 3 course are now proposed. The Commission staff had requested that the applicant prepare an updated vegetation map for the purpose of performing the changed circumstances review. The applicants submitted a map dated November 2001 that did not show southern tarplant growing anywhere on the site. Subsequently, after further consultation, the applicants submitted an updated map to Commission staff in April 2002 that included the 1998 population of the southern tarplant. This map documents nine different locations of southern tarplant on the site, including the location where approximately 4,500 southern tarplants were observed in 1998, and is reproduced in reduced for in Exhibit 3 (Biological Resources Map, dated May 5, 2002, prepared by Dudek & Associates).

The administrative record supporting the Commission's November, 1994 approval of the previous permit, listed southern tarplant as a California Native Plant Society[3] List 3

[3] The California Native Plant Society (CNPS) *Inventory of Rare and Endangered Plants of California (Inventory)* is widely accepted as the premier scientific reference on rarity in California flora. The *Inventory* currently includes distribution, ecology, and legal status information on over 2,000 rare taxa. The *Inventory* is the result of decades of investigation by CNPS in close collaboration with professionals in the California

species as described in the CNPS *Inventory of Rare and Endangered Plants of California (Inventory)* (List 3 status means that CNPS requests more information about the plant to establish whether it is rare, threatened or endangered – List 3 constitutes a "need more information" list). The only analysis of the plant's location on the site established in the administrative record up until November 1994 was that contained in the 1992 Environmental Impact Report (EIR) prepared for the proposed project. The final EIR, certified by the County Board of Supervisors in 1993, stated that 20 to 30 of the plants were located in an area proposed for development as the 18th fairway of the golf course, that the plant was designated CNPS List 3, and that loss of the population could be mitigated elsewhere on site with no residual adverse impacts to the southern tarplant. The EIR incorporated this analysis by reference from documents prepared by the applicant's consulting biologists (Interface Planning). In fact, the southern tarplant was officially upgraded from CNPS List 3 to List 1(b) by the time the Commission acted on the former permit in November of 1994 (and was known by the applicant to be slated for such change as early as May 1992 (Exhibit 28), before the EIR for the proposed project, listing the plant as CNPS List 3, was certified. This information was not provided to the Commission when it acted on CDP A-4-STB-93-154 in 1994 or provided to the Commission at the June 1999 hearing on the request for extension of the permit.

There is a significant difference between the way a List 3 plant (a list indicating that more information is needed to determine the accurate status of the species) and a List 1(b) plant (rare, threatened or endangered California native plant) are considered. This is particularly true when determining whether it is appropriate to change a project to avoid impacts (List 1(b) status indicates this according to the CNPS and the CDFG) or whether allowing the impact, with mitigation, to occur. (See CNPS-related documents, including statement of CNPS policy in opposition to transplanting rare, threatened, or endangered plants, Exhibit 36).

Department of Fish and Game, Bureau of Land Management, National Park Service, U.S. Fish & Wildlife Service, U.S. Forest Service, University of California, California State Universities, and other private and public institutions. Both the USFS and CDFG have signed memoranda of understanding with CNPS regarding information sharing for the *Inventory*. Academic researchers use the *Inventory* as a source for scientific information on the rarity and distribution of, and threats to, rare California plant species. Agencies such as CDFG, USFS, and BLM use the *Inventory* to develop their sensitive plant lists, to prioritize protection for endangered taxa, and to assist them in identifying potential rare plant impacts for individual projects. The *Inventory* has been maintained by CNPS since 1968 and is currently in its sixth edition. The CNPS Rare Plant Scientific Advisory Committee (RPSAC), composed of eminent botanists from throughout California, supervises development of the *Inventory*. Decisions on inclusion are based on an impartial scientific evaluation of information derived from all available sources following a set of formal criteria. CNPS botanical staff, RPSAC, and a network of over 400 professional botanists throughout the state continuously and rigorously review the *Inventory* for accuracy and completeness.

It is notable that elevation from List 3 to List 1(b) status qualifies a plant as a *de facto* candidate for state, and possibly federal, listing as threatened or endangered pursuant to the state and federal Endangered Species Acts. List 1(a) status, the only rank higher than 1(b) in the *Inventory* indicates that a plant is considered to be extinct. Of more importance to the Commission is the implication of the change in status, combined with the significant population numbers noted in 1998, for evaluation of the proposed project's consistency with the certified LCP. This is discussed in more detail in the relevant section of the findings.

There is some debate about whether List 3 status confers status as a rare or endangered species on a plant so listed, in terms of the interpretation of the applicable provisions in the County's certified LCP. Classification as a List 1(b) plant establishes that the plant's habitat is ESHA and must be protected pursuant to the ESHA protection policies of the LCP (including but not limited to LUP Policy 9-36 and Coastal Zoning Ordinance sections 35-97.1, .3, .7, and .18). Therefore, there are changed circumstances with regard to the southern tarplant.

1.4 Staff Review of Changed Circumstances

At the June 7, 1999 hearing, the Commission denied the applicant's request for an extension of Coastal Development Permit A-4-STB-93-154. The Commission denied the extension of the permit in light of new information, confirmed by the U.S. Fish and Wildlife Service, that credible reports had identified the federally threatened California red-legged frog within Eagle Canyon, on the eastern edge of the site.

The applicants' then-pending amendment request was rendered moot by the Commission's denial of the extension, and the pending appeals were continued until the red-legged frog matter could be addressed (the applicants' attorney testified at the June, 1999 hearing that Permit Streamlining Act timelines did not apply to the appeals). The applicants indicated to the Commission that necessary reviews by U.S. Fish and Wildlife Service (USFWS) would be completed before a further Commission hearing on changed circumstances. Although it was not anticipated at the June 1999 hearing, this review took almost three years to complete, ending in January of 2002.

In anticipation of the forthcoming completion of the USFWS review, the applicants contacted Commission staff during the summer of 2001 to arrange meetings and project updates. The applicants had occasionally updated the Commission staff since the June 1999 hearing on the progress of the USFWS review. The applicants informed Commission staff at that time that the USFWS was progressing in its administrative review of a Habitat Conservation Plan for the California red-legged frog and tidewater goby.

Staff visited the site in September, 2001 at the applicants' invitation. The Commission staff sighted white-tailed kites foraging on the site during the site visit, and noted

significant stands of native bunchgrasses. After the site visit, staff requested an updated biological resources survey of the subject site, including specifically an updated vegetation map. The applicants subsequently submitted surveys undertaken by Dudek, Inc., which included a report summarizing raptor use of the site, and a vegetation map, both dated November 2001.

During this period of time, Commission staff additionally submitted comments to the USFWS concerning the potential impacts of the proposed project on the California red-legged frog. The final HCP prepared by the applicants, and associated documents, including the Section 10(a) incidental take permit were authorized by USFWS in January, 2002 and submitted to Commission staff thereafter by the applicants.

The applicants had previously informed Commission staff during the fall of 2001 that the Commission hearing on changed circumstances should preferably be scheduled after the USFWS had made final determinations concerning the applicants' HCP and the Section 10(a) permit for the proposed project. The applicants further concurred with the staff recommendation that given the relatively short time then remaining until the Commission's scheduled April 2002 hearing in Santa Barbara, the item should be placed on that agenda. The applicants supported this tentative schedule.

Representatives of interested parties (Surfrider Foundation, Sierra Club) discussed the proposed project with Commission staff during a conference call they had requested, in February 2002. The Surfrider and Sierra Club representatives stated during the conference call that among other impacts posed by the project, they were concerned that the project would adversely affect a rare plant, southern tarplant.

Staff subsequently researched the opponents' claims concerning the southern tarplant, and determined that the sensitivity status of this plant is California Native Plant Society (CNPS) List 1(b), a designation that shows that the plant is considered rare, threatened or endangered and is therefore a *de facto* candidate for listing as threatened or endangered under the California Endangered Species Act. (CNPS List 1(a) status - the only higher ranking under the state's Natural Diversity Database classification system--indicates that a plant is extinct). The CNPS rankings are available in the California Natural Diversity Database maintained jointly by the CNPS and the California Department of Fish and Game.

Staff additionally reviewed the administrative record and the most recent vegetation map submitted by the applicants (the November 2001 map prepared by Dudek, Inc., and submitted at the request of staff). The map did not show southern tarplant in <u>any</u> location on the subject site, nor was the plant mentioned in the updated biological resources report prepared by Dudek and Associates concerning the subject site in November 2001 and submitted by the applicants.

The staff also reviewed the HCP related materials prepared by the applicant for USFWS and discovered brief references to the plant**,** but no mapping of the plant. Staff reviewed the project EIR (prepared in 1992, certified by Santa Barbara County Board of

Supervisors in 1993) and found that southern tarplant had been documented growing in a single location of 20 to 30 individual plants in the midst of the proposed 18th Fairway. The EIR indicated that the status of the plant was CNPS List 3, however, which does not denote the degree of rarity that CNPS List 1(b) status confers upon a plant so listed.

In early March, 2002, Commission staff requested that the applicants clarify the occurrence of southern tarplant on the subject site. Initially the applicants responded that the southern tarplant grew "under the (proposed) clubhouse where it always has been." The applicants subsequently indicated that in fact the population of southern tarplant at the proposed 18th Fairway location that is identified in the EIR was the only population that had ever been identified in the administrative records supporting previous Commission actions concerning the subject project.

Staff contacted the Santa Barbara County Energy Division staff, which further referred questions about the plant's occurrence on the subject site to the County's contract environmental compliance monitor for the Arco Dos Pueblos project, John Storrer. Mr. Storrer reported that he had identified an extensive population of Southern Tarplant during the summer of 1998, after abandonment of old oil and gas facilities had exposed the soils beneath the site of the old ARCO warehouse and loading racks. The southern tarplant seeds dormant in the soil had germinated under the ideal conditions of site abandonment (possibly including soil disturbance, availability of light and warmth, lack of competition from other plants, and perhaps other unknown factors). County staff were unable to locate specific reports prepared by the applicants to assess the Southern Tarplant population discovered in 1998, but referred Commission staff to Jaqueline Bowland,[4] a consulting botanist who had evaluated the population.

On request Ms. Bowland stated to Commission staff that in 1998 she performed a field investigation of the population discovered by Mr. Storrer and numbered the Southern Tarplant population at approximately 4,500 individual plants. This was a significant find -- a Southern Tarplant population of this size is known to occur in only a handful of other locations in the state.

[4] Ms. Bowland was the senior biologist for Interface Planning when that firm performed the first biological surveys of the site on behalf of Arco Oil and Gas Company, commencing in 1990/1991. Ms. Bowland documented the population of Southern Tarplant on the proposed 18th Fairway, and noted that the discovery was thought to be a northerly range extension for the Southern Tarplant, which had not been documented any further north than the Arco Dos Pueblos site at that time, in California. Interface Planning was purchased by Dudek, Inc., the firm that presently provides consulting services to the applicants. Ms. Bowland is now an independent botanical consultant, and in that capacity performed a survey of the new Southern Tarplant population discovered by Mr. Storrer. Ms. Bowland estimated the population of Southern Tarplant in the location Mr. Storrer had discovered as numbering approximately 4,500 plants in 1998.

Ms. Bowland further stated that she could not find any maps she may have made in 1998 of the Southern Tarplant population location (although Mr. Storrer was able to locate the area of the population spatially) and noted that she had informed the applicants' consultant, Dudek, Inc., of her conclusions regarding the 4,500 southern tarplants, in 1998.

On March 14, 2002, Commission staff visited the subject site with applicant/agent Richard W. Hollis, Jr., then-County Energy Division Planner Kristen Gettler, Mr. Storrer, and Klaus Radkte, Ph.D., and John Thomas, Ph.D., of GeoSafety, Inc. No germination of Southern Tarplant was evident in the old warehouse/loading rack location that was the site of the 1998 population bloom. Skeletal remains of the previous years plants (the plant is a late summer blooming annual that dies in the fall) were visible, however and at least fifty of the dried plants were flagged and an estimate made that at least several hundred could be identified.

Subsequently, the applicants provided on Commission staff request a number of documents, including other surveys by Dudek, Inc., that memorialized the presence of Southern Tarplant in approximately nine locations on site. This information concerning the Southern Tarplant indicates that the increase in numbers and locations of Southern Tarplant on the subject site is a changed circumstance.

Information also came to light during this period that the applicant proposes to remove the soil and seedbank in the area of the newest large Southern Tarplant population described above when the contaminated soils in that area are excavated. This had not been disclosed previously to the County staff. Thus the County staffs' approval of a CDP finding the project in substantial conformity with the previously imposed conditions (with an appeal to the Commission presently pending) was processed without an understanding of the impacts the proposed project or amendments thereto would have on this rare plant.

The applicants realized in late March, 2002 that they would be unable to adequately address the questions raised by Commission staffs' discovery of the Southern Tarplant information in time for staff to prepare an adequate recommendation for the Commission's April hearing. In addition, as explained below, a raptor nesting survey was underway during the month of May, and therefore a June hearing was scheduled for this item.

As noted previously, Commission staff (then-staff ecologist Jon Allen, Ph.D.) observed white-tailed kites foraging on the subject site during a site visit in early September 2001. Subsequently, the applicants' consultant, Dudek, Inc., prepared a report concerning raptor use on the subject site, and an associated map. The Dudek report and map indicated that white-tailed kites were present on the subject site, albeit outside of nesting season, and noted the presence of white-tailed kite nests on the subject site. However, the applicant subsequently asserted that the Dudek, Inc. report dated November of 2001 had incorrectly identified kite nests on the subject site because the nests had been noted outside of nesting season and were not in active use. (White-

tailed kite nesting season lasts from approximately April through August). Therefore, the reports and maps prepared by Dudek, Inc. were revised to delete reference to presence of white-tailed kite nests and substitute the phrase: "accumulation of sticks and debris."

As nesting season had almost arrived, Commission staff requested that the applicants verify their position that there were no white-tailed kites nesting on site by doing a followup survey undertaken *during* nesting season, which was about to commence. The applicants complied and retained a biological consulting firm (Pacific Southwest Biological Services to perform the site visit.

During this time, Commission staff also received anecdotal reports from County staff that white-tailed kites had regularly been seen foraging on the Arco Dos Pueblos site and that reports of white-tailed kites nesting on the site had also been received. Commission staff requested that the County staff ask Mr. Storrer, who had long monitored the Arco Dos Pueblos site and is a respected naturalist with extensive environmental impact analysis experience in Santa Barbara County, to address the possibility of white-tailed kite nesting on the site. In response, Mr. Storrer reviewed his site monitoring field notes, which recorded his observations of kite nest building activity in March 2000. Mr. Storrer also suggested that Commission staff contact Mark Holmgren, who is the curator of the vertebrate collection at the University of California, Santa Barbara, Museum of Systematics and Ecology. Mr. Holmgren is a well known wildlife expert with special expertise in raptor ecology. According to Mr. Storrer, Mr. Holmgren had also supervised a number of systematic surveys of white-tailed kites in the Santa Barbara County area.

Conferring further with the Commission's senior staff ecologist regarding white-tailed kite nesting on site, learned that the Commission's technical services staff had developed specific study protocols for winter roosting or nesting season evaluation of raptors. The protocols were developed in consultation with several noted raptor experts who provided independent review of the raptor habitat issues associated with the Bolsa Chica project.

Staff immediately provided the nesting season survey protocols to the applicants, and requested that the applicants implement the survey in accordance with the established protocols, to the extent feasible given the time remaining before the then-scheduled June 2002 Commission hearing.

PSBS commenced the protocol nesting surveys in May 2002 on behalf of the applicants. John Storrer accompanied the PSBS surveyors as the County's representative, at the request of Commission staff. Through almost the end of May 2002, the PSBS survey only documented one pair of kites on the subject site. The survey eventually documented two pairs of nesting white-tailed kites on the subject site when UCSB biologists provided detailed instructions to PSBS on where to locate the second pair. After the second nest was confirmed, PSBS terminated the study one week early at the applicants' request.

At the request of Commission staff, Mr. Holmgren and his research associate, Morgan Ball, also conducted a survey of white-tailed kite use of the Arco Dos Pueblos site area, in conjunction with the applicants' consultants' survey. Commission staff accompanied Mr. Holmgren and Mr. Ball for one morning survey in mid-May 2002. Using spotting scopes and binoculars, and positioned at an elevation-appropriate vantage point, the group was able to identify and track the movements of two pairs of white-tailed kites utilizing the subject site. Mr. Holmgren and Mr. Ball also noted behavioral evidence that the westernmost pair already had chicks in the nest. The results of field surveys performed by Mr. Holmgren and Mr. Ball were provided in written form to Commission staff, accompanied by annotated aerial photographs, in June 2002.

Subsequently, it was verified to the satisfaction of the applicants and Commission staff that a) two pairs of white-tailed kites nested on the subject site in 2002, and b) the westernmost pair not only had chicks in the nest, but successfully fledged five white-tailed kites from that nest. The reproductive success of the easternmost pair was not documented because the applicants terminated the study after egg laying had likely occurred but before nesting success was known.

The raptor nesting survey was terminated by the applicant on May 30, 2002 when the applicant's consultant, and the County of Santa Barbara's environmental monitoring contractor confirmed the UCSB biologists' observations that two pairs of White-tailed Kites were nesting on the site (one pair had five fledglings by the time the survey ended). Commission staff received the applicant's nesting report conclusions on June 7, 2002. The project was scheduled to be heard by the Commission on the following Monday. Consequently, the staff report published on May 31, 2002 only contained a recommendation based on the one confirmed Kite nest (within the proposed 18th Fairway of the course).

Because staff and others did not have time to adequately evaluate the implications of the second confirmed White-tailed Kite nest, the Commission opened the public hearing on June 10, 2002, took preliminary staff, applicant, and public testimony, and then continued the hearing. The Commission requested that staff and the applicant confer further regarding outstanding issues, and that staff evaluate the site's habitat value for species subject to changed circumstances. The Commission also requested that staff clarify whether recommendations for revised plans, if such recommendations were made by staff, specifically indicate whether a golf course project would still be feasible.

In accordance with the Commission's direction, staff and the applicants' representatives met on July 3, 2002 in the Ventura District office. Subsequently, the applicants retained a new consultant, Jeffrey B. Froke (Ph.D. in geography, UCLA, M.S. in ornithology, wildlife studies, Humboldt State University, Principal, California Wildlife Ecology, former principal of Golfauna Consulting). Dr. Froke and Dr. Dixon met in San Francisco in September 2002 to discuss the project. According to Dr. Dixon, Dr. Froke provided anecdotal observations of Monterey County and other golf courses he lived near or had

consulted on, where white-tailed kites used some portion of the sites. The applicants' agents suggested that the October Commission hearing proposed by staff be postponed to allow Dr. Dixon to visit the Monterey County golf courses familiar to Dr. Froke. Dr. Dixon and Dr. Froke subsequently attended site visits to the Monterey County golf courses arranged by Dr. Froke.

On Tuesday, October 8, the applicants' agents and Commission staff met again in the Ventura District office, with Dr. Dixon and Dr. Froke attending via conference telephone. The applicants' agents proposed the submittal of a report and recommendations by Dr. Froke to Dr. Dixon for consideration by October 9 (the next day). Staff and the applicants agreed that the matter would be placed on the Commission's November agenda if possible, but with the understanding that staff must have time to adequately consider and respond to the applicants' pending proposal.

On November 4, 2002, Commission staff, including Dr. Dixon, met with Dr. Froke and Mr. Storrer on the subject site. The purpose of the visit was for Dr. Dixon to observe the white-tailed kite habitat on site. Dr. Dixon's memorandum report concerning his observations and his professional opinion as the senior Commission staff ecologist are attached as Exhibit 13, and a map, Exhibit 1A, illustrates his conclusions regarding environmentally sensitive habitat of white-tailed kites on the subject site. In short, report finds that the project as proposed would not be consistent with the protection of the roosting, nesting and foraging habitat of the white-tailed kite on site, as discussed further below.

2.0 PROJECT DESCRIPTION and SETTING

2.1 Proposed Project

The proposed project includes construction of a public 18-hole golf course (approximately 100 acres) to operate 360 days/year and serve approximately 60,000 rounds of golf (1-4 golfers per round); 9-hole executive golf course (approximately 8 acres) to serve approximately 20,000 rounds per year; driving range and putting green (approximately 12 acres); turf farm (up to 3 acres); approximately 9,300 sq. ft. of clubhouse (restaurant/bar with 130 seats, banquet facilities, pro-shop, meeting rooms, administrative facilities, lockers); 8,012 sq. ft. cart barn; 7,974 sq. ft. maintenance and office building; approximately 15,000 sq. ft. maintenance yard (including wash-off area and fueling island/gasoline tanks, service yard); approximately 5,000 sq. ft. enclosed chemical and trash storage area including 800 sq. ft. chemical storage building; approximately 300 paved parking spaces, including 15 public coastal access parking spaces (clubhouse, cart facilities, parking cover approximately 8 acres, total), 700 sq. ft. halfway house (including snackbar, restrooms, starter station), other restroom facilities and three shelters; two 100 ft. long, 14 ft. high x 14 ft. wide tunnel undercrossings of the railroad tracks (to route golf carts paths through a zigzag course layout -- both undercrossings are located within riparian corridors; approximately 310,000 cu. yds. of grading (155,000 cu. yds. of cut; 155,000 cu. yds. of fill, including a maximum elevation change of 25 feet from existing to finished grade, with grading estimated to impact 125

acres); installation of 5,200 linear feet of 8" reclaimed water line from Goleta to site; construction of 4 acre-foot reclaimed water storage lake (8 ft. deep, 30,000 sq. ft. surface area), private on-site septic disposal system reliant on three (3) drywell pits for effluent disposal; dedication, construction, operation and maintenance of various public coastal access improvements; landscaping; installation of acceleration and deceleration lanes in Caltrans right-of-way; merger of all 23 existing lots (including 21 substandard-sized lots) into two parcels totaling 202 acres and applicant's proposal to restrict the resultant parcels from future subdivision; and development setbacks of a minimum of 55 feet from the bluff edge for all permanent, structural developments, and except for public coastal access trails, development setbacks of a minimum of 30 feet from top-of-bluff seaward edge for all other non-structural development (such as greens, fairways, tee boxes, cart paths, landscaping).

2.2 Proposed Amendments

The applicant proposes to amend the previously approved project in accordance with the revised project description dated February 28, 2002, and as clarified on June 4, 2002 . The applicants have also provided additional amendments on November 20, 2002 incorporating recommendations concerning the white-tailed kite. As part of the proposed project, the applicant proposes to waive any future right to request approval for the installation of shoreline protective devices, pursuant to the attached letter dated April 5, 2002. (See Exhibits 8 and 9) The applicants also submitted additional amendments in the form of a proposed white-tailed kite habitat enhancement plan prepared October 10, 2002 by Dr. Jeffrey Froke, and attached in the set of documents submitted for collation with this report by the applicants (the packet of documents supplied by the applicants is attached at the end of the Exhibit packet for this report).

The applicants clarified on November 20, 2002 that certain additional recommendations made by Dr. Froke in a draft plan dated September 10, 2002, which Dr. Froke had previously provided as a conceptual document to Commission staff ecologist John Dixon, Ph.D., which were not carried forward into Dr. Froke's October 10, 2002 final report, are also proposed by the applicants. Dr. Froke's September 10, 2002 memorandum, as well as his consideration of issues concerning the California red-legged frog and the reclaimed water storage lake are also included in the attachment. The applicants' agent advised staff on November 21, 2002 (telephone conversation Andriette Culbertson to Melanie Hale) that Dr. Froke and Mark Jennings, Ph.D., an expert on the California red-legged frog who had provided comments concerning the advisability of providing an uncovered water reservoir and of using chemicals throughout the proposed golf course, were conferring further and that possibly a joint update of their recommendations concerning the placement and best design of the reservoir could be forthcoming (it would be included in an addendum if so).

The changes proposed by the applicant are generally described as: modification of the golf course layout, relocation of vehicular access, changes to location and layout of the tunnel undercrossings of the railroad tracks, and the slight relocation and significant redesign of reclaimed water storage lake, including an increase in depth from the 8 feet

previously approved to at least 15 feet in depth, with a volumetric increase in stored water from approximately 4 acre-ft. to 5.4 acre-ft. of storage capacity, with surface area remaining approximately the same - 30,000 sq. ft. In addition, the sides of the lake will slope to approximately the 4 ft. mark, with the sides extending vertically the remainder of the way to the bottom. The applicant also proposes modifications to the architectural design of buildings, changes to drainage and erosion control features and design (including a water quality management program that will divert up to the two-year storm volume of water on the proposed Par 3 course away from Eagle Canyon), installation of a future horse tie-up/bicycle rack; and an increase in the number and location of bridges. The applicant proposes changes to the location and design of public vertical accessways, addition of one previously excluded inholding parcel, and the merger of the resultant 24 total lots into two lots including the applicant's proposal to restrict the resultant 208 acres/two (2) parcels from future redivision. The applicant proposes to add an approximately 700 sq. ft. pumphouse and padmounted electrical transformer for pumping of reclaimed water, and additionally proposes revised Agricultural Turf Management Plan, Integrated Pest Management Plan, and Water Quality Plan.

The applicant has also submitted a technical water quality plan review (a full copy is included in the applicants' attachment appended at the end of the exhibit package). The new plan applies primarily to grading and best management practices added to improve protection of the Par 3 golf course area drainage. The plan incorporates elements that prevent up to approximately the two-year storm from running into Eagle Canyon Creek. Analyses by Commission water quality unit staff are contained in Exhibits 49 and 50.

2.3 Pending Appeal/Contaminated Soils

An appeal filed in 1998 is pending concerning a County approval of ARCO's plan to address contaminated soils remaining on the subject site. Petroleum hydrocarbons, heavy metals, and other contaminants were detected in various areas of the site that were formerly used for oil and gas production since the 1940s.

According to the present applicants, the resolution of the contamination is the sole responsibility of the former site owner and initial golf course permittee, ARCO (Atlantic Richfield, a subsidiary of British Petroleum). ARCO obtained County administrative-level approval for a "Remedial Action Plan" (RAP). ARCO's proposal generally allows all but the worst contaminated soils to remain in place--only highly contaminated surface soils would be excavated and removed from the site. The remaining contaminated soils would be entombed on site after either being regraded and mixed with clean soils to dilute contaminant levels and to form the desired golf course contours (then capped with two feet of clean soils), or simply left undisturbed where the contaminants were originally detected. ARCO has indicated that groundwater monitoring wells are unnecessary on the subject site, although some concentrations of certain contaminants are reportedly high enough to continue subsurface migration.

Changed circumstances affecting the physical environment within which the RAP would be implemented have arisen as stated above. Although the Commission staff prepared a preliminary recommendation in 1999 of "no substantial issue" concerning the grounds for the appeal concerning the RAP, staff did not know at that time, for example, that southern tarplant, a CNPS List 1(b) sensitive native plant species now grows in an area proposed for contaminant excavation and offsite disposal. In addition, the final grading and drainage plans for the golf course project do not address the locations of contaminated soils in the manner the RAP anticipated. The grading plans do not show the locations of existing (baseline) or post-grading contaminated soils, even though the most recent grading and drainage plans, executed by both applicant and County representatives after the RAP was locally approved could have included this information (but do not).

Thus, the Commission cannot fully consider the changed circumstances and appealed project associated with the cleanup without first considering the applicants proposal for the golf course. Otherwise the staff would have to recommend that the Commission find "substantial issue" with regard to the RAP appeal. Therefore, after acting on the golf course permit vis-à-vis the changed circumstances review, the Commission will consider the RAP appeal at a subsequent Commission hearing.

2.4 Physical Setting

The project site is located on a coastal marine terrace immediately east of the Naples area, approximately 1.5 miles west of the intersection of Winchester Canyon and U.S. Highway 101, on the Gaviota Coast of Santa Barbara County. The site is bounded on the north by Highway 101, and along the south by steep coastal bluffs facing the Pacific Ocean. Undeveloped open space and grazing lands border the property on the upcoast (west) and downcoast (east). The Baccara Resort (formerly the Hyatt) is located approximately one mile downcoast, toward Goleta, on the south side of Highway 101. The lands north of Highway 101 are presently open space/agricultural land ascending into the Santa Ynez Mountains of the Los Padres National Forest.

Most of the site is comprised of two large parcels bisected by the Union Pacific Railroad tracks. Since the Commission approved former CDP A-4STB-93-154, the applicants have also purchased a 4-acre lot that was previously an inholding owned by a separate party. Twenty-one of the old Township of Naples substandard, antiquated lots are located at the westernmost end of the site. The development potential of these substandard sized lots has not been determined, but the Commission certified an LCP amendment in April 2002 that authorizes the owners of the Naples lots to seek development agreements concerning the lots with Santa Barbara County. The County is presently negotiating a Memorandum of Understanding concerning potential development plans for Naples lots on the lands adjacent to the subject site.

Slopes on the terraced portions of the site are generally less than 10 percent, but nine coastal drainages incise the site, descending at slopes often greater than 30 percent

into riparian canyons below. The coastal bluffs at the southern edge of the terraces descend almost vertically to the beach below.

Eagle Canyon marks the eastern parcel boundary, and Tomate Canyon extends north-south in the western portion of the site. Seven smaller unnamed drainages exist on the site, all flowing generally from north to south, toward the Pacific Ocean.

Soils on the site are primarily of the Diablo Series. This high clay soil series is characterized by slow permeability, high shrink-swell potential. In some areas, where former energy facility abandonment has occurred, excavation and compaction of the typical clay soils on site has resulted in the formation of new wetlands (one of the changed circumstances addressed in this report). In some areas of the site, the soils are comprised of deep beds of old alluvial soils, which are highly permeable.

The local climate is marine dominated, with mild winter and summer temperatures, consistent onshore winds, and periodic summer fog. Average rainfall along this portion of the coast is approximately 17 inches per year. As is characteristic of the Mediterranean climate pattern of Southern California, most of the annual rain falls between November and March.

The most predominant vegetation on the site consists of large expanses of ruderal (non-native) grasslands interspersed with patches of native grasslands. Numerous specimen non-native trees, such as cypress, pine, and eucalyptus dot the site, forming informal windrows in some locations and groves in others (particularly in Eagle Canyon). Some eucalyptus groves in or adjacent to Eagle Canyon have become increasingly important as fall and winter monarch butterfly aggregation and overwintering sites.

The mature specimen trees south of the railroad tracks have attracted a relatively rare raptor, the white-tailed kite, previously not known to visit the site. White-tailed kites had been thought on the verge of extinction in California in the 1930s, made a rebound and possibly peaked in numbers during the 1970s, and have fluctuated in numbers since. White-tailed kites were afforded special protection in the Santa Barbara County LCP in the early 1980s, but by the early 1990s, kites were virtually absent from the County. Abandonment of the area by white-tailed kites during that time was likely caused, at least in part, by the prolonged drought the ended in 1993. This spring, two pairs of white-tailed kites nested in Monterey pine and cypress trees (see Exhibit 1A).

Other habitat on site includes coastal sage scrub, small isolated wetlands (including a vernal pool of anthropogenic origin), riparian wetlands and stream corridors, southern willow scrub, fresh water marsh, an estuary in the mouth of Eagle Canyon, and the beachfront areas at the foot of the bluffs. Tomate Canyon contains a seasonal pond with high wildlife values, north of the railroad tracks.

Burmah Beach, located 1,600 feet east of the western parcel boundary is a known harbor seal "haulout" and rookery. In addition, the beach at the foot of the cliffs on the

site is a resting area for hundreds of Brown Pelicans. Naples Reef, which is considered a unique and sensitive habitat area, and an important surfing location, is located in the Pacific Ocean in close proximity to the western end of the site.

Eagle Canyon, which traverses the easterly boundary of the site, drains to the Pacific Ocean via a small estuary at the mouth of the canyon. Eagle Canyon Creek has been found to contain breeding habitat for the federally endangered California red-legged frog. In addition, the estuary at the mouth of the creek contains the federally threatened tidewater goby.

Two sensitive plants are found on site: southern tarplant and cliff aster. The cliff aster tends to inhabit the shale bluffs of the site, and therefore is mostly located outside of the proposed development envelope according to the applicants' consulting botanist, Dr. Kathy Rindlaub. Southern tarplant is a California Native Plant Society List 1(b) plant and was known when the project EIR was prepared in 1992 to occur in one location, with 20-30 plants, at that time. The presence of the southern tarplant on site has since been determined to be far more extensive and significant than was thought when the Commission approved the former permit for the golf course proposal in 1994 and nine populations have been documented on site - one containing at least 4,500 plants in 1998.

Finally, a number of new wetlands have been documented since the site was characterized at the time of project approval. The underlying environmental assessments for the proposed project were prepared at the end of approximately five dry years - a drought cycle. Since the original project approval, however, energy facility abandonment (soils excavation and compaction, in an area of low-permeability clay soils) in 1996 - 1998 combined with wetter rainfall years produced a series of new, small wetlands. The applicant delineated these wetlands in consultation with the U.S. Army Corps of Engineers and the Natural Resources Conservation Service. Some of the amendments presently proposed by the applicant are adjustments of the golf course layout to avoid these wetlands.

3.0 ENVIRONMENTALLY SENSITIVE RESOURCES; WATER QUALITY

The environmentally sensitive species and habitats on the site of the proposed project for which the Commission finds changed circumstances include: California red-legged frog; tidewater goby; monarch butterfly; southern tarplant, white-tailed kite, and wetlands. Findings concerning the potential impacts of the proposed development on each are considered in the following sections.

3.1 California red-legged frog

Life History

The California red-legged frog, a native amphibian believed to have inspired Mark Twain's fabled short story "The Celebrated Jumping Frog of Calaveras County," gained Endangered Species Act (ESA) protection as a threatened species in May 1996.[5]

The historic range of the California red-legged frog extended coastally from the vicinity of Point Reyes National Seashore, Marin County, California and inland from the vicinity of Redding, Shasta County, California, south to northwestern Baja California, Mexico. The frog has sustained a 70 percent reduction in its geographic range in California, and a population decline by at least 90 percent as a result of habitat loss and alteration, overexploitation, introduction of exotic predators, and exposure to pesticides. A single population remains in Southern California. Rangewide, only four populations contain more than 350 adults.

The California red-legged frog was once so abundant as to be a major human food source in the Bay area and the Central Valley. About 80,000 frogs were consumed annually in the late 1800s and early 1900s. As the population declined, bullfrogs were exported from the East Coast to keep the "froggery" going. Bullfrogs, however, are voracious predators. They helped drive the red-legged frog (and many other species) populations lower yet. Habitat loss to logging, wetland draining, water diversions, dams, cattle grazing, pesticides, urban sprawl, and agricultural expansion also decimated the species. California has lost 90% of it historic riparian areas and wetlands.

Conservation of amphibians like the California red-legged frog are important for many reasons, including their role as "indicators" of significant environmental changes that may go undetected by humans. Their bodies are much more vulnerable to factors such as disease, pollution, toxic chemicals, radiation, and habitat destruction.

The largest native frog in the western United States, the California red-legged frog ranges from 1.5 to 5 inches in length. An adult frog is distinguished by its unique coloring: an olive, brown, gray or reddish back marked by small black flecks and larger dark blotches and a rusty-red hue to its belly and the undersides of its hind legs.

[5] Note: Much of the technical information regarding the California red-legged frog cited below, particularly concerning the habitat of the frog in Santa Barbara County, is quoted from: "U.S. Fish and Wildlife Service. 2002. Recovery Plan for the California Red-legged Frog (*Rana aurora draytonii*)." (published by U.S. Fish and Wildlife Service, Portland, Oregon. viii + 173 pp.), absent further internal citations within the document.

The California red-legged frog requires a variety of habitat elements with aquatic breeding areas embedded within a matrix of riparian and upland dispersal habitats. Breeding sites of the California red-legged frog are in aquatic habitats including pools and backwaters within streams and creeks, ponds, marshes, springs, sag ponds, dune ponds and lagoons. Additionally, California red-legged frogs frequently breed in artificial impoundments such as stock ponds and reservoirs.

California red-legged frogs utilize a variety of habitats in the Santa Barbara County area, including dune swale ponds (Vandenberg Air Force Base), and population numbers are higher where bullfrogs, which are significant predators of California red-legged frogs, are not present. The USFWS and researchers advising the Service have determined that overall, California red-legged frogs are most likely to persist where multiple breeding areas are embedded within a matrix of habitats used for dispersal. California red-legged frogs live in a Mediterranean climate in Santa Barbara County, which is characterized by temporal and spatial changes in habitat quality. In addition to climatic fluctuations, the habitats used by this species typically change in extent and suitability in response to the dynamic nature of floodplain and fluvial processes (i.e., natural water flow and sedimentation regimes that, in flux, create, modify, and eliminate deep pools, backwater areas, ponds, marshes, and other aquatic habitats) (N. Scott and G. Rathbun *in litt.*1998). Therefore, the frog uses a variety of areas, including various aquatic, riparian, and upland habitats. Rangewide, and even within local populations, there is much variation in how frogs use their environment; in some cases, they may complete their entire life cycle in a particular habitat (i.e., a pond is suitable for all life stages), and in other cases, they may seek multiple habitat types. Overall, multiple breeding areas are embedded within a matrix of habitats used for dispersal Scott and G. Rathbun *in litt.* 1998).

Although previous characterizations of the subject site (1992 EIR, for example, and more recent surveys by the applicants various consultants) have tended to minimize its value for California red-legged frog habitat, the most recent literature compiled by the USFWS indicates that the frogs rely on, and will utilize for breeding habitat, more marginal water sources than had been noted previously by site reviewers. Tadpoles have been observed by several observers over the years in the vernal pool on site, for example. In one case (Interface Planning comments in the 1992 FEIR) the tadpoles were identified after-the-fact as likely being those of bullfrogs, although the applicants have since stated that there are no accounts of bullfrog observations on the subject site. In light of more contemporary information published by the USFWS, it seems that these dismissals may have been based on incomplete information and the tadpoles could potentially have been those of red-legged frogs. In addition, suitable breeding habitat has been identified in Tomate Canyon by the standards recently documented by USFWS, although Tomate Canyon (nor other site areas) has never been surveyed for tadpoles (the applicants' consultants state that California red-legged frog surveys do not look for tadpoles because disturbing habitat to look for the tadpoles could result in an impermissible "take" of the species).

Frogs spend considerable time resting and feeding in riparian vegetation when it is

present. It is believed that the moisture and cover of the riparian plant community provide good foraging habitat and may facilitate dispersal in addition to providing pools and backwater aquatic areas for breeding. California red-legged frogs can be encountered living within streams at distances exceeding 3 kilometers (2 miles) from the breeding site, and have been found up to 30 meters (100 feet) from water in adjacent dense riparian vegetation, for up to 77 days (Rathbun *et al.*1993).

California red-legged frogs often disperse from their breeding habitat to forage and seek summer habitat if water is not available. This summer habitat could include spaces under boulders or rocks and organic debris, such as downed trees or logs; industrial debris; and agricultural features, such as drains, watering troughs, abandoned sheds, or hay-ricks. California red-legged frogs use small mammal burrows and moist leaf litter (Jennings and Hayes 1994); incised stream channels with portions narrower and deeper than 46 centimeters (18 inches) may also provide habitat (U.S. Fish and Wildlife Service 1996a).

Reproduction. California red-legged frogs breed from November through April (Storer 1925). Males appear at breeding sites from 2 to 4 weeks before females (Storer 1925). At these sites, males frequently call in small groups of two to seven individuals, although some instances they may call individually (Jennings *et al. in litt.* 1992). Females are attracted to the calling males. A pair in amplexus (breeding position) moves to an oviposition site (the location where eggs are laid) and the eggs are fertilized while being attached to a brace. Braces include emergent vegetation such as bulrushes (*Scirpus* spp.) and cattails (*Typha* spp.) or roots and twigs; the egg masses float on the surface of the water (Hayes and Miyamoto 1984). Each mass contains about 2,000 to 5,000 eggs that are each about 2.0 to 2.8 millimeter (0.08 to 0.11 inches) in diameter (Figure 8). The eggs are dark reddish brown (Storer 1925).

Growth and Development. Eggs hatch in 6 to 14 days depending on water temperatures (Jennings 1988b). Typically, most adult frogs lay their eggs in March, or earlier, depending on localized temperatures. Eggs require approximately 20-22 days to develop into tadpoles, and tadpoles require 11 to 20 weeks to develop into terrestrial frogs. Sexual maturity can be attained at 2 years of age by males and 3 years of age by females Jennings and Hayes 1985); adults may live to 10 years.

Activity Patterns and Movements. Hayes and Tennant (1985) found juvenile frogs to be active diurnally and nocturnally, whereas adult frogs were largely nocturnal. The season of activity for the California red-legged frog seems to vary with the local climate (Storer 1925); individuals from coastal populations, which rarely experience low temperature extremes because of the moderating maritime effect, are rarely inactive. Individuals from inland sites, where temperatures are lower, may become inactive for long intervals (Jennings *et al. in litt*. 1992) and no information is available on the activity levels of California red-legged frogs at higher elevations.

Feeding. The diet of California red-legged frogs is highly variable. The foraging ecology of larvae has not been studied, but they are thought to be algal grazers (Jennings *et al.*

litt. 1992). Hayes and Tennant (1985) found invertebrates to be the most common food items of adult frogs. Vertebrates, such as Pacific tree frogs (*Hyla regilla*) and California mice (*Peromyscus californicus*), represented over half of the prey mass eaten by larger frogs, although invertebrates were the most numerous food items. Feeding typically occurs along the shoreline and on the surface of the water; juveniles appear to forage during both daytime and nighttime, whereas subadults and adults appear to feed at night (Hayes and Tennant 1985). Radiotracking studies suggest that frogs also forage several meters into dense riparian areas (G. Rathbun pers. comm 1993, as cited in U.S. Fish and Wildlife Service 1996a).

Reasons for Decline and Threats to Survival

The California red-legged frog is threatened by human activities, many of which operate synergistically and cumulatively with each other and with natural disturbances (i.e., droughts or floods). Factors associated with declining populations of the frog include degradation and loss of its habitat through agriculture, urbanization, mining, overgrazing, recreation, timber harvesting, non-native plants, impoundments, water diversions, degraded water quality, use of pesticides, and introduced predators. The reason for decline and degree of threats vary by geographic location. California red-legged frog populations are threatened by more than one factor in most streams. The following discussion is organized according to the five listing criteria under section 4(a)(1) of the Endangered Species Act.

The proposed project will include several features that may attract California red-legged frogs from their known breeding habitat within Eagle Canyon into the upland and dispersal areas elsewhere in the site (for example to the vernal pool or seasonal ponds and riparian/wetland habitats in Drainage 4, Tomate Canyon, and elsewhere on the site depending on annual rainfall patterns. At the same time the golf course operations provide attractions for the frogs (examples, irrigated greens and fairways, the uncovered reclaimed water storage lake) and nuisances at the same time. The broader areas of the golf course are not subject to any more restrictive protective measures concerning chemical applications for turf management, etc. Therefore exposure to dispersing frogs attracted onto the golf course at large may occur.

Measures to mitigate these impacts, such as broader restrictions on chemical applications throughout the subject site than have previously been proposed by the applicants, undergrounding and covering the proposed reclaimed water reservoir and re-routing the undercrossing in Tomate Canyon, and possibly the undercrossing in Drainage 4 to avoid impacts to the riparian wetlands (seasonal ponds) known to form in these canyons north of the railroad tracks in wet years, would have been imposed through special conditions. These measures have not been imposed because impacts of the proposed project discussed elsewhere have rendered the project as a whole, inconsistent with the applicable requirements of the County's certified LCP and therefore the project, as proposed, cannot be approved.

The construction of a network of golf cart paths and maintenance routes on the proposed project site, combined with the estimated 40,000 rounds per year of golf and relatively intensive maintenance equipment access to the site (mowing, spraying, trash collection, halfway house & turf farm management, etc.) would result in impacts to the site analogous to some amount of roadway/urbanization affects. Irrigated turf areas would likely become attractive corridors for frog dispersal, and mortality due to crushing by carts, maintenance vehicles, etc. appears to be unavoidable.

Because other impacts of the proposed project addressed elsewhere in this report have resulted in the Commission's denial of the proposed project, special conditions that would have been associated with an approval have not been imposed. Had the Commission required conditions for the subject project, however, conditions to provide frog refugia, potential additional aquatic habitat of breeding quality to offset the unavoidable, predictable loss of some California red-legged frogs due to golf course operations, and other measures would have been required

Urbanization typically results in changes in hydroperiod due to new or increased irrigation and intensified land use activities. In the case of the Dos Pueblos Golf Links, the applicants propose to install a 5.4-acre (.7 acre surface area) uncovered reclaimed water reservoir that will receive gray water for irrigation purposes from the Goleta Sanitary District. The proposed reservoir is located in the southeastern area of the site, south of the railroad tracks, and close to the Eagle Canyon creek and estuary where the breeding population of the California red-legged frog is located.

The proposed reservoir would introduce a perennial water source at the site (the reservoir would be 15 feet deep and would be drained to as little as the 11-ft. level, but would still have a minimum of at least three or four feet of water under all conditions). This feature would easily result in the colonization of the reservoir by non-native predators of the California red-legged frog, most notably, by bullfrogs, which were noted on site by the applicants' consultants, SAIC, in 1999. Previously, tadpoles spotted in the vernal pool that is situated near the proposed reservoir site were noted in the 1992 project EIR, and were described in comments by the Interface/Dudek senior biologist as likely being bullfrog tadpoles in comments published in the FEIR. It is not known how or in what numbers the bullfrogs became established at the site: often they are placed in a riparian corridor or wetland deliberately (frequently as the release of childrens' petstore tadpole-raising projects), and then breed prolifically. Bullfrogs are voracious predators of red-legged frogs. Usually bullfrog populations are limited in areas with seasonal drying because it takes the bullfrog tadpoles two years to mature (as opposed to the typical California red-legged frog tadpole which can mature from tadpole to emergent frog in as little as about two months, though typically requires somewhat longer).

The applicants assert nevertheless that bullfrogs will be prevented from colonizing the reclaimed water lake by means of an annual survey for bullfrogs and removal of any non-native frogs detected during the survey. The most certain way to eliminate breeding habitat for the bullfrogs, however, is to underground and completely cover the

reclaimed water reservoir. There are other problems with the reservoir as well. For example, to obtain approval for the proposed project Habitat Conservation Plan, and for the Section 10(a) permit for incidental "take" of a federally threatened species, the applicants have proposed to render the reclaimed water lake more or less biologically sterile or at least inhospitable for breeding populations of the California red-legged frogs. The applicants propose amendments to the previous project approval that would prevent the growth of aquatic vegetation within the reservoir and would not provide dense, sheltering growth around the reservoir, and additionally would draw the lake down during a single evening with strong pumping (necessary to achieve sufficient pressure to water the 208-acre site in the time available because reclaimed water can only be legally applied during nighttime hours according to the applicants). These issues are the subject of letters by the applicants' and opponents' consulting biologists, and have been additionally considered by Commission staff ecologists. The applicants assert that California red-legged frogs in the lake when drawdown pumping commences would "immediately sense the lowering water levels and move to the sides and exit the lake." The reservoir is large, almost an acre in surface area, fifteen feet deep, holding 5.4 acre-feet of water. It has not been demonstrated that a red-legged frog anywhere within the lake would sense the lowering water levels and behave as the applicants assert, in time to reach the sides and emerge before the water levels drained to the vertical point of the reservoir's sides (approximately six feet down from surface). The applicants have stated that they are opposed to undergrounding and permanently covering the lake because they assert that this would cost $2 million more than the proposed lake, and render the project infeasible.

Commission staff has conferred with the applicants' biologist, Dr. Galen Rathbun, to consider design modifications that could reduce the reservoir's potential impact on California red-legged frogs and result in the best possible design of the options that the applicants indicated that they would be willing to implement if such a structure should eventually be approved. The Commission staff did not indicate to the applicants however, that the aboveground uncovered reservoir favored by the applicants was the preferred design of the staff ecologists. Moreover, the proposals to cover the reservoir put forward in early discussions by the applicants, relied on a semi-permeable cover that would still allow the frogs to sense water inside and thus be attracted to the reservoir. Once frogs are attracted to the structure, if they cannot enter, they may simply await an opportunity and die at the foot of the reservoir. The problem of frog barriers has been documented by the research of Dr. Rathbun. In light of that possibility, Commission staff concluded that an uncovered reservoir would be better than a semi-covered reservoir if frogs could escape. The uncovered reservoir would still render frogs that entered it highly visible, and therefore vulnerable to, predators. Dr. Froke noted projects he has consulted on or is otherwise familiar with in northern California where uncovered reservoirs have been constructed on golf courses or other sites. He believes that frogs either do not use the reservoirs, or do so safely, but acknowledges that in these examples there has been no systematic monitoring to verify this. It is possible that California red-legged frogs within the reservoir when drawdown occurs at night would be particularly vulnerable either in declining water levels or while

trying to escape the draining pond, to predation by known nighttime predators of California red-legged frogs, such as raccoons or night herons.

For these reasons, had the project been otherwise consistent with the applicable policies and provisions of the County's certified LCP, the Commission would have imposed a condition to underground and fully cover the reservoir, thereby avoiding the potential adverse impacts the reservoir may have upon California red-legged frogs. In the present case, however, impacts to sensitive species and habitats that are discussed in other sections have rendered the project inconsistent with the applicable standards and the Commission therefore denies the project.

In addition, the previous staff reported dated May 31, 2002 contained substantial analysis of the potential impacts of the applicant's proposal to apply pesticides and other chemical turf management products on the subject site. The applicant's notified staff on November 21, 2002 that they were amending their application to severely restrict such application of chemicals but the amendment is only at a very conceptual, general level presently and has not addressed the inconsistencies between the conceptual proposal and specific chemical use authorizations requested by the applicants through the HCP and Agricultural Turf Management/Integrated Pest Management Plans that are also part of the applicants proposed project description presently.

Therefore, the findings stated in the previous staff report dated May 31, 2002 concerning potential adverse impacts to riparian habitat and species on site that may occur and the resultant inconsistencies with the applicable standards of the County's LCP that result, continue to apply and are hereby incorporated by reference. The Commission would require significant changes to the applicants' proposals through revised plans and other special conditions if this project were otherwise approvable to address the concerns about chemical management and impacts upon sensitive species. The key change the Commission would require if the project had been approvable, would have been the elimination of the Par 3 course altogether to ensure the protection of the monarch butterfly, tidewater goby, southern tarplant and California red-legged frog populations that are all jeopardized by the construction and operation of the Par 3 course. The applicants have asserted that changes proposed to the grading plans for the Par 3 course, in addition to other Best Management Practices the applicants would implement, would avoid the potential adverse impacts of chemical applications on the Par 3 course (up to the 2-year storm would be diverted from Eagle Canyon through positive grading away from the canyon, and through the placement of swales). The Commission's water quality staff has evaluated these proposals (Exhibit 50) and while noting that the proposals are well developed for this type of development, the implementation of the proposed water quality measures cannot assure against the intrusion of polluted runoff into the waters of the site, particularly Eagle Canyon Creek. Therefore, although the applicants' proposal has merit, it does not eliminate the risk to the threatened and sensitive species, particularly the California red-legged frog. The applicants also indicate that Eagle Canyon and other upland riparian habitat corridors denoted as California red-legged frog habitat by the USFWS and others would be

protected by "chemical use buffers" (shown with broken lines on Exhibit 1) setback from these habitats. The Commission has determined however that these "buffers" are really not buffers at all but only demark areas where the same chemical management practices authorized elsewhere on the golf course will, when undertaken in these areas, simply trigger certain monitoring requirements. There is not other restriction offered by the "buffers" and this has been verified by the Commission's water quality unit technical staff (see Exhibit 50). The water quality staff has developed potential special conditions also noted in these exhibits that would have been imposed to mitigate the adverse impacts of the proposed project consistent with requirements that are typically imposed on all development proposals of this significance by the Commission, but these measures will not be required because as noted, the project must be denied due to other impacts discussed elsewhere in this report that render it inconsistent with the LCP.

Applicable LCP Policies and Provisions

Santa Barbara County's certified Local Coastal Program (LCP) contains the following Land Use Plan (LUP) policies and provisions and implementing ordinances regarding Environmentally Sensitive Habitat and Water Quality. The portions that are that are applicable to the changed circumstances consideration of the project regarding the California Red-legged Frog and the consideration of the proposed amendments are set forth in pertinent part below:

LUP Policy 2-11: *All development, including agriculture, adjacent to areas designated on the land use plan or resource maps as environmentally sensitive habitat areas, shall be regulated to avoid adverse impacts on habitat resources. Regulatory measure include, but are not limited to, setbacks, buffer zones, grading controls, noise restrictions, maintenance of natural vegetation, and control of runoff.*

The LUP provides in Section 3.9.3. (Planning Issues) that "*Habitats are considered to be environmentally sensitive when they exhibit extreme vulnerability to disturbance or destruction from human activities. In Santa Barbara County, recreational uses, agricultural practices, and development pose the greatest threats to habitats because existing County regulations do not provide adequate protection.*

The LUP states on page 119: *While the (ESHA) designations reflected on the land use plan and resource maps represent the best available information, these designations are not definitive and may need modification in the future. The scale of the maps precludes complete accuracy in the mapping of habitat areas and in some cases, the precise location of habitat areas is not known. In addition, migration of species or discovery of new habitats would result in the need for designation of a new area. Therefore, the boundaries of the designations should be updated periodically in order to incorporate new data.*

In addition, the LUP states on page 120: *Most native plant communities are not designated on the land use plan and resource maps because they exist in so many*

locations throughout the coastal zone. Only major streams and wetlands are shown on the land use plan maps.

The LUP further states on pages 119 and 120: *Significant habitat resources in the coastal zone which meet at least one of these criteria are designated on the land use plan maps. Environmentally sensitive habitat areas have been grouped into the following categories: (*dunes, wetlands, native grasslands, vernal pools, butterfly trees, marine mammal rookeries and hauling grounds, White-tailed Kite habitat, subtidal reefs, rocky points and intertidal areas, kelp beds, seabird nesting and roosting areas, native plant*s,* streams) … *Due to the limitations of mapping techniques and, in some cases, incomplete information on habitat areas, the following policies shall apply to development on parcels designated as a habitat area on the land use plan and/or resource maps and to development on parcels within 250 feet of a habitat area or projects affecting an environmentally sensitive habitat area.*

LUP Policy 9-1: *Prior to the issuance of a development permit, all projects on parcels shown on the land use plan and/or resource maps with a Habitat Area overlay designation or within 250 feet of such designation or projects affecting an environmentally sensitive habitat area shall be found to be in conformity with the applicable habitat protection policies of the land use plan. All development plans, grading plans, etc., shall show the precise location of the habitat(s) potentially affected by the proposed project. Projects which could adversely impact an environmentally sensitive habitat area may be subject to a site inspection by a qualified biologist to be selected jointly by the County and the applicant.*

Habitats found in the County and policies for protecting these habitats are listed below. These policies are in addition to existing State and Federal regulations which protect many species of plants and animals and their habitats.

According to the FEIR for the subject project (92-EIR-16), Tomate and Eagle Canyons (LUP pg. 135) are among the ESHAs designated on site by the County's LCP. In addition, native grassland areas, rare plant habitat areas, and wetlands and riparian drainages providing upland habitat for the red-legged frog, and the vernal pool south of the railroad, at the railroad bridge, are all ESHA pursuant to the requirements or the LCP.

LUP Policy 9-9 (Wetlands buffers): *A buffer strip, a minimum of 100 feet in width, shall be maintained in natural condition along the periphery of all wetlands. No permanent structures shall be permitted within the wetland or buffer area except structures of a minor nature, i.e., fences, or structures necessary to support the uses in Policy 9-10. … the (wetland boundary) definition shall not be construed to prohibit public trails within 100 feet of a wetland.*

LUP Policy 9-10: *Light recreation such as birdwatching or nature study and scientific and educational uses shall be permitted with appropriate controls to prevent adverse impacts.*

LUP Policy 9-13: *No unauthorized vehicle traffic shall be permitted in wetlands and pedestrian traffic shall be regulated and incidental to the permitted uses*.

LUP Policy 9-14: *New development adjacent to or in close proximity to wetlands shall be compatible with the continuance of the habitat area and shall not result in a reduction in the biological productivity or water quality of the wetland due to runoff (carrying additional sediment or contaminants), noise, thermal pollution, or other disturbances.*

LUP Policy 9-15: *Mosquito abatement practices shall be limited to the minimum necessary to protect health and prevent damage to natural resources. Spraying shall be avoided during nesting seasons to protect wildlife…biological controls are encouraged.*

LUP Policy 9-19: *No mosquito control activity shall be carried out in vernal pools unless it is required to avoid severe nuisance.*

LUP Policy 9-20*: Grass cutting for fire prevention shall be conducted in such a manner as to protect vernal pools. No grass cutting shall be allowed within the vernal pool area or within a buffer zone of five feet or greater.*

LUP Policy 9-21: *Development shall be sited and designed to avoid vernal pool sites as depicted on the resource maps.*

The LUP states on page 136: *Streams and creeks affect both the quantity and quality of local water supplies. Heavy siltation of the stream bed can clog the natural flow of water from the surface into groundwater reserves. Increased sedimentation in streams also results in higher flows and increased flood hazards. Polluted runoff from upland development or direct discharge into a stream can infiltrate the groundwater, thereby polluting underground water resources. Development and land use activity within and adjacent to the watercourse has profound effects on stream hydrology, channel geometry, and water quality. Protection of streams requires regulation of land use within the immediate environment as well as control of land use in the larger watershed. The following policies are directed at development within the stream corridor. Regulation of land uses in watershed is addressed in Section 3.3 of the (coastal) plan.*

Definitions:

Stream: *watercourses, including major and minor streams, drainageways and small lakes, ponds, and marshy areas through with streams pass. (Coastal Wetlands are not included.)*

Riparian Vegetation: *vegetation normally found along the banks and beds of streams, creeks, and rivers.*

Stream Corridor: *a stream and its minimium prescribed buffer strip.*

Buffer: *a designated width of land adjacent to the stream which is necessary to protect biological productivity, water quality, and hydrological characteristics of the stream. A buffer strip is measured horizontally from the banks or high water mark of the stream landward.*

Policies:

LUP Policy 9-37: *The minimum buffer strip for major streams in rural areas, as defined by the land use plan, shall be presumptively 100 feet, and for streams in urban areas, 50 feet. These minimum buffers may be adjusted upward or downward on a case-by-case basis. The buffer shall be established based on an investigation of the following factors and after consultation with the Department of Fish and Game and Regional Water Quality Control Board in order to protect the biological productivity and water quality of streams:*

a. soil type and stability of stream corridors;
b. how surface water filters into the ground;
c. slope of the land on either side of the stream; and
d. location of the 100-year flood plain boundary.

Riparian vegetation shall be protected and shall be included in the buffer. Where riparian vegetation has previously been removed, except for channelization, the buffer shall allow for the reestablishment of riparian vegetation to its prior extent to the greatest degree possible.

LUP Policy 9-38: *No structures shall be located within the stream corridor except: public trails, dams for necessary water supply projects, flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development; and other development where the primary function is for the improvement of fish and wildlife habitat. Culverts, fences, pipelines, and bridges (when support structures are located outside the critical habitat) may be permitted when no alternative route/location is feasible. All development shall incorporate the best mitigation measures feasible.*

LUP Policy 9-40: All *development, including dredging, filling, and grading within stream corridors, shall be limited to activities necessary for the construction of uses specified in Policy 9-38. When such activities require removal of riparian plant species, revegetation with local native plants shall be required except where undesirable for flood control purposes. Minor clearing of vegetation for hiking, biking, and equestrian trails shall be permitted.*

3.2 Tidewater Goby

The federally threatened Tidewater Goby, is a small brackish water fish endemic to California estuaries has been discovered in the estuary at the mouth of Eagle Canyon Creek since permit approval in November 1994. The fish is subject to the same potential impacts from project construction and operations that may affect the waters of Eagle Canyon Creek as is the California Red-legged Frog discussed in the previous section, and those findings are therefore incorporated here by reference and extend equally to the Tidewater Goby. Special Conditions that the Commission would otherwise have imposed to address impacts of the proposed project upon the goby will not be necessary because due to unmitigable adverse impacts of the proposed project on other environmentally sensitive habitat and species elsewhere on the subject site, the Commission denies the proposed project.

3.3 Monarch Butterfly

The Santa Barbara County LCP protects butterfly habitat (specifically trees harboring roosting populations of the insects). The certified Land Use Plan states that tagging studies indicate that the Monarch butterfly (*Danaus plexippus*) migrates southward over long distances to escape the cold winters of the central and northern states. Their wintering grounds are areas within a coastal strip extending from Los Angeles to Monterey. These wintering grounds are roosting habitats consisting of a circular configuration of tall trees, usually eucalyptus, which are essential for the mating phase of the butterfly's life cycle. During the fall and winter months the trees are used by massive numbers of Monarch butterflies as communal roosts. These winter clusters represent the most sensitive part of the Monarch's life cycle. Repopulation of the species depends upon the mating phase which occurs in these specialized habitats. Little is known about the behavior patterns and migration routes of the Monarch butterfly; therefore, this habitat is of important scientific, educational, and general public interest.

In addition, the Monarch butterfly is also considered a state "sensitive animal" and wintering sites for this species are considered sensitive resources by the California Department of Fish and Game. Though the Monarch butterfly is not endangered, its overwintering sites and annual migration are threatened by human activity. In 1984, the International Union for Conservation of Nature and Natural Resources classified the migration and overwintering behavior of the monarch butterfly as a "threatened phenomenon." Many scientists agree that if overwintering sites are not protected, especially in Mexico, the migration and overwintering phenomenon could disappear in as little as 20 years (Marriott, in Outdoor California, February 2002).

Changed Circumstances

The Final Environmental Impact Report for the project (92-EIR-16) stated (page 5.1-19, page 000374 of the Administrative Record) that :

A recent survey of the County conducted by a monarch butterfly expert indicated that Eagle Canyon was used by approximately 130 butterflies during October, 1990. …Eagle Canyon is a small monarch aggregation site that is abandoned early in the season by monarchs searching for a higher quality wintering site. ….clustering or roosting within the proposed golf course area has not been reported. A brief survey conducted by The Monarch Project (1987) indicates that eucalyptus trees onsite provides nectaring habitat for monarchs, but do not constitute a significant or sensitive monarch resource. These trees are not the more sensitive winter habitat site as discussed in Policy 9-22 and 9-23 of the County LCP.

The applicant does not deny that monarch butterfly use of the site has increased significantly since the 1992 EIR was prepared for the proposed project. A study commissioned by the applicant and prepared by Althouse and Meade, June 2001. The Meade study indicates that butterflies are using an aggregation site of eucalyptus trees located within the eastern area of the Executive Par 3 Course. This area is also proposed for placement of a bioswale drainage feature.

The newly identified aggregation site, identified in the report as the "Upper Western Grove Site" contained a maximum of 4,848 butterflies on October 24, 2000. The report states that this peak of population size in the third week of October is a classic autumnal aggregation trend. Autumnal sites typically harbor large numbers of transient butterflies. Autumnal sites are considered important to aggregation phenomena and are protected as Environmentally Sensitive Habitats. The report also indicates that during a prior survey 12,910 monarch butterflies were counted in Eagle Canyon (east site) on a single November day in one case.

A total of 72,208 monarch butterflies were counted during the 2000-2001 survey on twenty-eight different dates from October 6, 2000 to March 9, 2001, in Eagle Canyon.

The Eagle Canyon West Grove contained a maximum aggregation size of 6,710 butterflies on November 13, 2000.

This is a significant change compared to the FEIR identification of approximately 130 butterflies in October, 1990, ten years earlier. The 1990 count was relied on by the County in approving the Conditional Use Permit for the project, and by the Commission in approving the project in November 1994.

For these reasons, changed circumstances exist with regard to the Monarch butterfly use of the site, both in location of aggregation and in intensity of use of butterfly trees.

Life History

According to Althouse and Meade, Inc., the Monarch butterfly is a cosmopolitan and well-known species with distribution across the temperate zone of North America and much of the world. In North America, they express the dramatic population level phenomena of overwintering migration, where populations collapse their distribution from an area of more than two-hundred million acres in the summer months to less than several hundred acres in the winter.

Monarch butterflies west of the Rocky Mountains move to the west coast of California in late summer and early fall. Monarch butterflies enter the coastal zone and seek out aggregation sites in protected locations near the ocean. The number of monarch butterflies that aggregate in any one grove may change dramatically from year to year, as trees grow or fall, and as weather conditions vary among seasons and years. These sites are dynamic with respect to their ability to provide appropriate aggregation conditions, and are dependent on the condition of the trees, associated vegetation, site-specific topography, and changes in the local environment.

The overwintering period of the Monarch butterfly is a vulnerable stage of the life cycle of the species. (Althouse and Meade, Inc., June 2001)

LCP Policies and Provisions

The County's LCP defines Monarch butterfly habitat as Environmentally Sensitive Habitat Area, and thus all ESHA policies and provisions are applicable to Monarch sites. The County's LCP contains two policies specifically applicable to Monarch butterfly sites:

Land Use Plan Policy 9-22: *Butterfly trees shall not be removed except where they pose a serious threat to life or property, and shall not be pruned during roosting and nesting season.*

Land Use Plan Policy 9-23: *Adjacent development shall be set back a minimum of 50 feet from the trees.*

These policies are replicated as development standards in Section 35-97.12 of the Coastal Zoning Ordinance:

Section 35-97.12. *Development Standards for Butterfly Tree Habitats*

1. *Butterfly trees shall not be removed except where they pose a serious threat to life or property, and shall not be pruned during roosting and nesting season.*
2. *Adjacent development shall be set back a minimum of 50 feet from the trees.*

In addition to policies specifically protective of butterfly trees (set forth above), the certified LCP protects Environmentally Sensitive Habitat Areas. The Upper Western Grove and the Eagle Canyon West Grove (the overwintering site) collectively constitute ESHA.

Certified coastal Land Use Plan policy 2-11 cited above states that:

All development, including agriculture, adjacent to areas designated on the land use plan or resource maps as environmentally sensitive habitat areas, shall be regulated to avoid adverse impacts on habitat resources. Regulatory measures include, but are not limited to, setbacks, buffer zones, grading controls, noise restrictions, maintenance of natural vegetation, and control of runoff.

Monarch Butterfly Habitat in Eagle Canyon Eucalyptus Groves

According to the applicant's consultants, Althouse and Meade, Inc., the Monarch butterfly aggregations occur in two locations in and adjacent to Eagle Canyon. The more aggregation site identified as the "Upper Western Grove" and the other site is identified as "Eagle Canyon West." The latter is located within Eagle Canyon, in a relatively steeply sloping area that is not proposed for development (the grove is approximately 80 feet east of the Par 3 Course). This site was the most populated site in 2000, according to the applicant's consultant.

The Eagle Canyon West Grove tends to be more prominently used for overwintering, whereas the Upper Western Grove tends to be most populated during the fall months, and is referred to as an autumnal aggregation site. (See aggregation counts for each grove prepared by Althouse and Meade, Inc., 2000-2001).

The Upper Western Grove is located within the Executive Par 3 Course. (See Exhibit 3). The Par 3 Course is not set back 50 feet horizontally from the dripline of the trees as required by the County's LCP. The course is placed under the trees, with one of the greens immediately under the overhanging branches. The applicant asserts that this design is acceptable because of the height of the overhanging branches (inferring vertical separation as a substitute for the horizontal) and because the type of encroaching development is an "irrigated lawn." Specific impacts to the aggregation groves are discussed in the following section.

The construction of the proposed Par-3 golf course does not comply with the requirements for a 50-foot setback from butterfly trees applicable to all development, as required by the County's certified LCP, as discussed below. Monarch aggregation was not occurring in the eucalyptus grove amidst the Par-3 course at the time of permit approval, therefore this inconsistency between the development footprint and the requirements of the LCP did not exist at that time. As discussed below the applicants acknowledge that the proposed Par 3 course is not set back the minimum distance of 50 feet from the outer canopy of the eucalyptus grove (Grove J on applicants' tree plan) that contains the new butterfly aggregation site identified as a changed circumstance. The applicants argue that such a setback is not necessary and need only be measured from the handful of specific trees their consultants have recorded with butterflies affixed to them. They argue that other trees comprising the grove, even immediately adjacent to the trees they have documented with aggregations on them, are not protected by the

standards of the County's certified LCP that require a minimum setback of 50 feet from butterfly trees.

The former permit incorporated a condition that stated (County Special Condition 9 (B3) "Monarch Butterflies):"

Pipeline construction shall not occur within 50 feet of the Monarch autumnal roosting trees located in Eagle Canyon between October 1 and January 31.

This condition only addresses the encroachment of the proposed reclaimed water pipeline construction, which would occur on existing pipe racks within Eagle Canyon. The condition was developed to address the minor use of the site by Monarch butterflies that was known at the time the EIR for the project was prepared and at the time the County and Commission permits were subsequently approved (1993 and 1994). The impacts of the pipeline construction would only occur one time, and it was determined that if the pipeline construction was set back a minimum of 50 feet from the roosting site known then (with a population of only 130 butterflies in the count noted in the EIR), mitigation would be adequate to avoid any significant impacts to the Monarch butterflies in Eagle Canyon.

The use of the groves in and adjacent to Eagle Canyon by aggregating Monarch butterflies has increased exponentially, however, since the project was approved. The Upper Western Grove contained an aggregation of 4,848 butterflies in one day's count (October 24, 2000) - the peak for the grove that fall, and the Eagle Canyon West Grove contained a maximum aggregation size of 6,710 butterflies on November 13, 2000.

Thus, construction and operation impacts of the project as proposed pose a significant threat to the Monarch butterflies currently using the site.

With regard to construction, the applicant’s consultants recommend that construction activities within 200 feet of Monarch butterfly habitat "should not be planned between October and March to avoid impacts to aggregating butterflies."

The Executive Par 3 Course is located immediately adjacent to the Upper Western Grove, however, as stated above. Unless Par 3 Course construction does not proceed during the prescribed months, construction will inevitably take place within the 200 ft. boundary. Nevertheless, limiting the time of construction does not address the potential impact of most concern.

The most serious threats to the Monarch aggregations are posed by the operation of the Par 3 Course. The applicant's consultants identified four types of disturbance from golf course operations:

1. Disturbance to aggregations from people moving underneath the clusters.
2. Strikes by golf balls.
3. Pesticide overspray into the grove, or pesticide present on wet surfaces.

4. Reduction of groves adjacent to the aggregation sites.

- **Disturbance during Operations**

Monarch butterflies can be disturbed and flushed from their aggregations by people coming too near a butterfly cluster. This depends on the time of day and the topography of the aggregation site.

The autumnal site, which is the Upper Western Grove site, is within the Par 3 course coincident with the green for Hole 3 and the tee for Hole 6. This aggregation site is the one most likely to be subject to human disturbance, due to the relatively flat topography and the position of clusters on the north face of the line of trees (toward the areas of play). Golfers playing Hole 3 will aim directly toward the Autumnal Roosting Grove (Upper Western Grove) and Golfers playing Hole 6 will tee off immediately adjacent to the trees. Whether golf balls could be expected to strike butterfly aggregates is probably a function of the skill and intent of the individual golfer.

The overwintering grove (Eagle Canyon West Grove) on the west bank of Eagle Canyon is somewhat more removed from development, and unlikely to be the target of accidental or deliberate golf ball strikes, but could still be subject to disturbance from people approaching the edge of the canyon, or entering the canyon (seeking balls for example) unless they observed the butterflies quietly.

- **Pesticide Applications: Overspray, Drift, Pesticides on Wet Surfaces**

Monarch butterflies are susceptible to pesticides, both airborne and on the ground.

Althouse and Meade report that Monarchs visit grassy areas to imbibe water when dew forms or when sprinklers or other sources of moisture have wetted either vegetation or the ground. Monarchs especially like to visit wet medium length grass (3 to 4 inches). Pesticide residues in such locations can kill monarchs.

The consultants point to four conditions in the applicant's Habitat Conservation Plan (July 17, 2001, page 35, prepared by applicant pursuant to USFWS permit process for Red-legged Frog and Tidewater Goby "take" due to project construction and operations).

The referenced page of the HCP states in pertinent part that:

… Within the golf course areas (par-three course, 18-hole course, putting green, driving range, and turf farm), herbicides would be applied from a boom-sprayer (15 to 18 feet in width) attached to a 250-gallon tank on the back of a golf course utility truck.

…In order to reduce the possibility of exposing California red-legged frogs to pesticides and herbicides, the following restrictions will govern the application of these chemicals

onsite and be incorporated into the final ATMIPM (Agroturf Management and Integrated Pest Management Plan) program (the 3 restrictions applicable to the Par 3 Course)*:*

1. *During the rainy season (November through April), no herbicides or pesticides will be applied within 24 hours prior to forecasted rain or within 24 hours after rainfall.*

2. *Application of herbicides and pesticides will be administered after the morning dew has evaporated and before the evening dew has set.*

3. *In no case shall any spraying of chemicals take place anywhere onsite when wind conditions exceed five (5) miles per hour (mph).*

Analysis of the applicant's chemical management plan and consideration of the plans' assurances of environmental protection is addressed in more detail previously in these findings (see the Red-legged Frog section B.1). That section contains a fuller evaluation of the details and problems of the chemical management strategies the applicant proposes.

As stated previously, the Final EIR for the approved project states on page 5.4-1, Administrative Record page 000452, (Section 5.4.1.1 Regional Setting, Climate and Meteorology) that:

The prevailing winds are from the northeast at approximately five miles per hour *(1990 windrose from the El Capitan State Beach air quality monitoring station). This is caused by the Pacific High, an anticyclone high pressure cell over the Pacific Ocean several hundred miles to the west. Locally, there is a tendency for the diurnal land/sea breeze cycle to cause the prevailing winds to change direction and move offshore from early evening to morning and then return to the general onshore wind flow. Afternoon wind speeds are approximately 10--20 miles per hour (mph) during the spring and summer, approximately 10 mph during the fall and* ***approximately 3 mph during the winter.***

Thus, as noted previously, the winter season is the only time winds fall below the 5-mile per hour measure, and this increases the likelihood that ideal spraying opportunities will arise during the months when the monarch aggregations have formed on site. The Par 3 Course is essentially at "ground zero" from the Monarch Groves, and the prevailing wind direction would blow any application of chemicals on the Par 3 Course north of the railroad tracks directly into the Monarch trees. Even a sudden, brief change in wind direction and velocity could catch a spraying applicator unprepared and send overdrift into the aggregates.

The application windspeed requirements in the HCP, even if ideal, would potentially deliver pesticides to the Monarch aggregates in seconds (the measurement of windspeed in miles per hour is virtually meaningless in such close spaces). Pesticide overspray is a serious problem, and some notable cases of overspray and spray drift

from agricultural spray applications in Ventura County -- most notably at the Mound Elementary school located adjacent to lemon groves from which accidental overapplication of Lorsban or Dursban (trade names for chlorpyrifos-- which is not proposed as a chemical of use on the course) sickened school children nearby on approximately November 10, 2000 according to the Ventura County Agricultural Commissioners office (contacted by Commission staff) Such incidents demonstrate that even licensed operators applying authorized chemicals have accidents and make errors that may have significant adverse consequences.

The applicant's consultants state that if the conditions for chemical use in the HCP are met, impact to Monarch butterflies from chemicals on site "will be reduced to acceptable levels." While it is not clear what "acceptable levels" would be, it does appear very difficult even under ideal conditions, to comply with the HCP requirements. When possible applicator error and sudden wind changes are considered, exposure of Monarch butterfly aggregations in the Upper Western Grove to harmful chemicals appears quite likely.

In addition to the HCP chemical application restrictions listed above, the consultants recommend that: The *use of pesticides shall be controlled during the aggregation season to ensure that no insecticides come in contact with Monarch butterflies.*

As noted above, windspeeds suitable for compliance with the rules are best predicted in the winter season, when butterfly aggregates are present and sensitive. In addition, some of the chemicals proposed for use by the applicant indicate that wintertime application is recommended, which dramatically increases the risk of destroying the aggregations of nearby butterflies if misapplication occurs. Other chemicals on the list recommend irrigation after application to ensure penetration of the chemical to the roots of turf grasses. This requirement renders the HCP pledge to apply chemicals after dew dries in the morning and before dew forms in the evening, essentially meaningless, since water must be applied to the turf after these chemicals are applied. The chemically treated, wet turf then becomes an attractant to butterflies, as stated above.

The data sheets for some of the applicant's "preferred use" chemicals indicate that application near the aggregate groves could pose a substantial risk of mortality to the gathered butterflies. For example, the plan adds Imadaclorpid (brand name "Merit") to the list of "Preferred use chemicals" which are supposed to be the least toxic category of allowable chemicals, and represent the chemical options the applicant should use before turning to more toxic chemicals. The material safety data sheet for Merit, which is used to control insect pests on golf course turf, states the following information for the insecticide (insect killer):

ENVIRONMENTAL HAZARDS:

This product is highly toxic to aquatic invertebrates. Do not apply directly to water, or to areas where surface water is present or to intertidal areas below the mean high water mark. Do not contaminate water when disposing of equipment washwaters.

*This product is **highly toxic to bees exposed to direct treatment or residues on blooming crops or weeds. Do not apply this product or allow it to drift to blooming crops or weeds if bees are visiting the treatment area.***

The instructions for "Merit" further state:

*The active ingredient in MERIT 75 WSP Insecticide has sufficient **residual activity** so that applications can be made preceding the egg laying activity of the target pests. High levels of control can be achieved when applications are made preceding or during the egg laying period. …Optimum control will be achieved when applications are made prior to egg hatch of target pests, **followed by sufficient irrigation or rainfall to move the active ingredient through the thatch.***

Use of this chemical in compliance with the instructions for use would conflict with the directive by Althouse and Meade not to combine pesticides and wet grass because butterflies are drawn to wet grass, where they imbibe liquid.

This chemical ("Merit") is just one of the many "preferred use chemicals" that the applicant represents will be applied to the golf course. The only means the applicant proposes to confirm that in fact the application is not harmful to sensitive species is through subsequent water sampling in adjacent waterways after the chemical is applied in areas marked on the site plan as "chemical use buffer areas" (shown with a broken line) adjacent to waterways on site.

The applicant relies on water testing after chemical application as the only method to insure that its chemical use does not harm sensitive species. Even if the water testing is done properly and yields accurate results, should chemical residues be found, no action is immediately required. The applicant is permitted to make adjustments to the chemical applications, keep testing the water, and see how it goes for up to two years. No intervention in operations, ban on use of chemicals, or investigation of ecological damage to sensitive habitat or species is required if water or soil testing results are positive for contaminants.

Section 3.0 of the HCP states that buffer areas have been identified for Eagle Canyon, Tomate Canyon and Drainage 4 North and that use of chemicals authorized for application on site within these buffer areas will trigger chemical sampling outlined in Section 3.1.1. Section 3.1.1 (Chemical Sampling) of the HCP (pages 31 & 32) only states, however, relatively vague standards for sampling. In one reference, "Table 3" is the standard, in another reference use of "certain chemicals" (unspecified) will trigger "additional sampling" but only if used within the "buffer areas."

Despite the use of the term "chemical buffer area", application of chemicals is not prohibited in these areas. The "chemical use buffers" shown on the site plan only indicate a zone that triggers testing when certain chemicals are applied.

The Table 3 testing parameters are identified in the HCP as required only for the first two years of golf course operations, or additional time to followup on adaptive management if contaminants are detected. Thus, the Table 3 testing appears to have a sunset feature, and will terminate. Therefore, the proposed project does not include any meaningful, enforceable prohibition on further chemical use if necessary to avoid harm to sensitive species

Nothing in the HCP or applicants proposal requires testing for the residues of insecticides, fungicides, herbicides and other toxic chemicals authorized for use on the site in the TMP/IPM that might harm Monarch butterflies. Moreover, there is no testing proposed at all to ensure that toxins do not enter the terrestrial and botanical habitat areas utilized by the Monarch butterflies since the HCP proposes measures that are aimed at protecting the Eagle Canyon Creek.

While the proposed chemical management procedures may be adequate for general purposes in many locations on the 208-acre site, these procedures are completely inadequate for use in the Executive Par-3 Course located at Eagle Canyon. The Monarch butterflies found in this area of the site are highly sensitive to disturbance. The entire butterfly aggregation in the Upper Western Grove could be extirpated by a chemical application mistake.

The risk of upset associated with building and maintaining the Executive Par-3 Course in the highly sensitive Eagle Canyon area is unacceptable and cannot be mitigated to levels consistent with the requirements of Santa Barbara County's certified LCP. The Commission finds that the project can only be rendered consistent with the certified LCP through the implementation of Special Condition 3, which requires deletion of the Executive Par-3 Course, among other changes to the project described in the Special Condition.

The elimination of the Par-3 Course will ensure that the significant populations of autumnal and overwintering populations of Monarch butterflies documented on site will be sufficiently buffered from the remainder of the golf course operations to prevent accidental poisoning of the butterflies through chemical applications.

Additionally, the elimination of the Par-3 Course will also eliminate the applicant's proposal to remove or thin trees in that area of the site, which is consistent with the Althouse and Meade recommendation that such removal or thinning be limited as much as possible to avoid undermining the fragile parameters of the microclimate that attracts and protects the butterfly aggregates in and adjacent to Eagle Canyon.

The elimination of the Par-3 Course will also ensure that golfers are not playing toward, and immediately under the autumnal aggregations located near Holes 3 and 6. It will prevent the noise, errant golf shots and human presence that could result in disturbance to and potential flushing of butterfly aggregations, and prevent the adverse consequences to the Monarch populations of chronic stress associated with use of the habitat area for the estimated 20,000 rounds of golf (1 to 4 players per round) per year.

Assuming that the maximum 80,000 golfers is evenly distributed by month, for sake of illustration, over 6,000 golfers could pass beneath the Upper Western Grove site on the Par-3 course in a single month.

Thus, the construction and operation of the Par-3 course poses unacceptable levels of potentially adverse habitat impacts, potential chemical destruction of thousands of aggregating butterflies, and the removal or thinning of eucalyptus trees to create sufficient clear playing space.

The applicant's consultants recommend against the reduction in the density of eucalyptus groves to the west and north of the aggregation sites and note that tree thinning and removal may affect the microclimate conditions within the aggregation sites. Protection from wind and sunlight, and amelioration of extremes in temperature and humidity are functions that groves of trees outside of the immediate aggregation area provide. Reduction of the density of foliage or the number of trees in groves near the butterfly aggregations should be minimized, according to the consultants. The consultants also note that all of the eucalyptus trees on the north side of the railroad, near the entrance to the property contribute to the microclimate conditions of the aggregation sites.

The applicants have reiterated that they do not propose to remove any of the eucalyptus trees within Eagle Canyon itself, or within Grove J, just north of the railroad tracks and adjacent to the Canyon, on the Par 3 course. However, the applicants propose placement of tees and/or greens within less than the minimum 50 feet of setback area called for by the certified LCP from butterfly trees. The applicants justify this placement by asserting that only the smaller subset of trees within that grove that have butterfly aggregations affixed to them during the autumnal roosting or overwinter season are technically protected as butterfly trees. They assert that so long as the setback is preserved from that smaller subset of trees, the project is consistent with the applicable policies. The Commission has always interpreted the butterfly tree policies as protecting the entire cluster or grove of trees and not just a few specific trees, when the trees are closely configured as in this case. The setback is imposed from the outermost edge of the grove, because otherwise diseased trees may be deemed a potential hazard to humans utilizing the golf facilities close to such trees, thereby increasing the pressure to remove trees from the grove. Even if the trees so removed do not individually attract aggregates of monarch butterflies, the loss of outer trees increases the wind and chill factor the butterflies endure and renders the remaining trees more vulnerable to “blowdown”, thereby incrementally weakening the habitat of the grove overall and thus gradually diminishing the habitat value of the monarch butterfly ESHA.

The applicants' consultants, Althouse and Meade have submitted a recent update indicating that removal of trees north of Grove J, within the Par 3 course but not trees in Grove J itself (which the applicants do not propose) would not adversely affect the monarch butterfly habitat of Grove J.

The Commission concludes that even though it will not be necessary to impose special conditions in this case because for other reasons the Commission denies this project, if the project had been approved, a condition for revised plans to delete the Par 3 course would have been required among other measures to protect the monarch butterfly habitat consistent with the requirements of the LCP.

3.4 Southern Tarplant

The Southern Tarplant (sometimes called "Spikeweed") is considered a Federal "*Species of Concern*" and a California Native Plant Society "List 1(B)" species, which signifies that is a rare, threatened, or endangered California native plant. List 1(B) status qualifies the plant for listing status as a rare, threatened, or endangered plant under the California Endangered Species Act. The only higher status that can be conferred on a plant is List 1(A) which essentially means that the plant is extinct.

Southern Tarplant is an annual species, in the aster (Sunflower) family, and at seasonal maturity can grow to as large as 1.5 feet in width and approximately two feet tall (maturity size ranges significantly in response to adequacy of environmental conditions during a particular season's germination and growth). The peak of bloom occurs in late summer and early fall, when the plants are covered with small, bright yellow flowers. The skeletal remains of dead tarplant resemble tumbleweed.[6]

- **Information Known at the Time of Project Approval**

The Southern Tarplant was first discovered on the Arco Dos Pueblos site in 1991, as part of a Biological Resources Analysis (June 28, 1991, Revised October 15, 1991) undertaken by Jacqueline Bowland, then Senior Biologist at Interface Planning and Counseling Corporation, the consulting firm serving as agent for then-applicant, Arco Oil and Gas.

- **20 - 30 plants on proposed 18th Fairway**

Ms. Bowland, undertaking field surveys to support the analysis, discovered a small population of Southern Tarplant numbering approximately 20 to 30 plants by her estimate, in the middle of what is presently proposed to be the 18th Fairway of the golf course. According to Ms. Bowland, that population was considered to be the most northerly range extension of the Southern Tarplant known at that time, and discovery of the plant was something of a surprise.

Ms. Bowland's biological survey was submitted to Santa Barbara County as part of the materials developed by Interface to support the original application for the golf course

[6] Background information on southern tarplant was provided to Commission staff by John Storrer, Storrer Environmental Services, who is an experienced environmental condition compliance consultant under contract with Santa Barbara County to monitor the Arco Dos Pueblos project.

and appurtenant facilities (the Biological Resources Analysis comprised Section IX of the application, dated October 25, 1991, submitted by Whitt Hollis as employee/agent, Arco Oil and Gas). The biological survey was eventually incorporated by reference into the Environmental Impact Report prepared for the subject project (92-EIR-16) under the direction of Santa Barbara County staff.

- **CNPS "List 3" Status**

At the time the 1991 Interface biological analysis was prepared, the California Native Plant Society status of the Southern Tarplant was "List 3." This status was reported by the Interface analysis in the application to Santa Barbara County, and subsequently re-stated the Final EIR for the project. March 1993 (FEIR 92-EIR-16 was certified in 1993).

"List 3" status for a plant is a designation of much less concern than List 1(B) status. List 3 status means that more information is needed, but does not constitute listing the plant as rare, endangered, or threatened.

The Interface Biological Resources Analysis (County application, Section IX, Page IX-3) states:

A special interest plant was encountered in the ruderal grassland community on the south side of the railroad tracks. Southern tarplant or spikeweed (Hemizonia australis) was found in one small population adjacent to a windrow to the west of barranca #3 on the south side of the access road that parallels the bluffs (refer to Figure 1) (Figure 1 is an Addendum Exhibit). The population occurs within a disturbed area associated with an active oil and gas production facility, where brushing for fire control has occurred recently. This plant is on List 3 of the CNPS Inventory of Rare and Endangered Vascular Plants of California (Smith and Berg, 1988). List 3 indicates that more information is needed to obtain information such as the plant's distribution and current threats to its existence, and to define appropriate protection policies. According to one local flora, this plant occurs from the Ellwood area south to lower California and is generally found in sandy substrates near the coast (Smith, C.F., 1974).

This summary of the status of the Southern Tarplant was repeated in the Environmental Impact Report for the project. Final EIR 92-EIR-16 was dated February 1993 and finalized in March 1993 by Santa Barbara County, incorporating comments and responses. 92-EIR-16 was certified by the County Board of Supervisors on August 17, 1993.

Page 5.1-16 of the FEIR, dated March 1993, Administrative Record Page 000371 states:

Southern Tarplant. The southern tarplant (Hemizonia australis) has no official status, but it is on List 3 of the California Native Plant Society's (CNPS) Inventory of Rare and Endangered Vascular Plants of California (Smith and Berg, 1988). "List 3" is a compendium of plants for which CNPS lacks the information necessary to determine

rare, threatened or endangered status. CNPS believes that many historic occurrences of southern tarplant have been extirpated but requests additional rarity or endangerment information. This species occurs throughout southern coastal California, from San Diego County to Santa Barbara County. According to Smith (1976), it is "common in many sandy fields near the ocean, between Goleta and Ellwood." The occurrence of this species on the project site appears to constitute a range extension since its northern limit is reported to be Ellwood Mesa. A small population of southern tarplant was located by Interface (1991) immediately south of the coastal road and west of Drainage #3 (Figure 5.1-1), as verified by the EIR consultants.

The List 3 status of the Southern Tarplant was interpreted by the County as requiring that the impacts to the plant be addressed through mitigation, rather than through avoidance of the impact (preservation of the population in its existing location).

Mitigation Measure B8 (FEIR page 5.1-48) stated that the collection of seed, greenhouse germination of the collected seed, and subsequent transplanting of the greenhouse stock elsewhere on site would be sufficient mitigation, and required that the BELP (Biological Enhancement Landscape Plan) drafted by the applicant be revised to include these measures (including monitoring and a contingency plan in case of high mortality). Thus, the FEIR concluded that "*Implementation of the above measure would reduce impacts to sensitive plants occurring onsite to less than significant levels (Class II).*

Thus, the FEIR did not consider project alternatives that would avoid impacts to the Southern Tarplant, protecting the population in place.

- **Upgrade to CNPS "List 1(B)" Status**

On April 4, 2002 the applicant submitted a binder to Commission staff, in response to an earlier request by Commission staff for documents in the applicant's records concerning Southern Tarplant. The binder contained a one page memorandum, under tab 3, from Jackie Bowland (Interface Planning and Counseling Corporation, Senior Biologist) to Whitt Hollis, labeled as "Memorandum to Dos Pueblos Golf Links File" RE: Southern Tarplant, dated May 14, 1992.

The memorandum regarding Southern Tarplant advises of a pending change in the California Native Plant Society's assigned status for the plant. The memorandum notes that the plant's listing would possibly change from List 3 to List 1(B) in the then-pending publication of the CNPS updated Inventory of Rare and Endangered Plants of California anticipated later in that year. The memorandum states in part:

… A new edition of this publication is due out this fall, which will list the southern tarplant as 1B. List 1B includes "plants rare, threatened or endangered in California and elsewhere." The importance of this change is that all plants listed in the Inventory as 1B are considered rare under Section 15380 of the State CEQA Guidelines, whether they are listed as such by the California Department of Fish and Game (CDFG) or not.

… This change elevates the importance of this plant population, and may require mitigation measures to reduce or eliminate potential adverse impacts. Acceptable mitigation measures are subject to approval by the CDFG and Santa Barbara County, and could include such approaches as avoidance and ongoing protection of the population, avoidance with a minimum buffer area of undisturbed habitat surrounding the population, transplantation elsewhere, or a combination of some or all of these measures.

Ms. Bowland's memorandum is dated May 14, 1992. The Southern Tarplant was subsequently elevated to List 1B status in the CNPS Inventory revised edition as Ms. Bowland predicted. Although the change in status of the Southern Tarplant had already occurred, the FEIR that was subsequently issued in 1993 was not corrected to reflect the change from 3 to 1(B) in the CNPS Inventory.

As the result, upon finalization of the EIR the mitigation approach of collecting seed but destroying the donor population was deemed acceptable as a condition of approval in the County's subsequent approval of the project, and was later incorporated by reference into the coastal development permit approved by the Commission in 1994.

- **Changes in the Distribution and Number of Southern Tarplant locations & populations since 1994 permit approval**

The new hearing on changed circumstances also provides staff with the opportunity, under the Commission's regulations, to request information staff believes necessary to properly evaluate the project in light of potentially changed circumstances. Staff requested in September 2001 that the applicant provide an updated map of biological resources on site, particularly vegetation. In response, the applicant supplied a full sized, to-scale site map represented as the current vegetation map of the site (November 21, 2001 vegetation map prepared by Dudek & Associates, full-sized copy on file at District office; no reduced copy available.)

In addition, the applicant submitted a report dated November 26, 2001 prepared by Dudek & Associates, by Sherri L. Miller, Senior Biologist, titled: "Update of Biological Resources Report for the ARCO Dos Pueblos Golf Links Project, Santa Barbara County, California." The report states in part:

This report documents the results of a biological resources survey conducted by Dudek and Associates, Inc. (DUDEK) at the approximately 208-acre Dos Pueblos Golf Links project area. The project site is located in an unincorporated area of Santa Barbara County, California.

The purpose of this letter report is to determine if there are any significant changes (e.g., changed circumstances) relating to vegetation communities on the Dos Pueblos Golf Links site from the original environmental review in 1993 (92-EIR-16) to current

conditions. The site's current physical conditions remain substantially unchanged as compared to the physical conditions recorded in 1991 and 1992 (citations*) and in the 1993 EIR for the project…*

The report stated in summary:

When comparing the current physical conditions onsite to those recorded in 1991 and 1992 (and presented in the 1993 EIR on the proposed project), it is apparent that physical conditions onsite have not changed substantially (see Table 1). The acreage of developed lands has decreased due to the abandonment of the oil and gas facilities and the differentiation between ornamental plantings from developed lands in recent surveys. In addition, the abandonment of the oil and gas facilities has resulted in the creation of disturbed wetlands areas and a slight increase in annual non-native grassland acreage (i.e., grasses have volunteered within some previously developed areas). The golf course has been designed to avoid these disturbed wetlands areas.

The report contained no analysis of changes in the locations or number of Southern Tarplant on site, though attached Appendix A contained a "floral compendium" of "vascular plant species" arranged by family. *Hemizonia* parryi ssp. *Australis*, Southern Tarplant, is listed under the family Asteraceae (Sunflower Family).[7] Subsequently, interested parties raised a concern about the project's impacts on the Southern Tarplant, among other issues. Commission staff then reviewing the project for changed circumstances was unaware that the Southern Tarplant existed on the subject site, and examined the administrative record for information about the issue. Staff consulted the applicant's November 2001 report and vegetation map referenced above. No Southern Tarplant locations, including the one shown in the 1993 EIR were

[7] "Mulefat" - (*Baccharis salicifolia*) a shrub that is also a member of the Sunflower family, as is Southern Tarplant, was noted on site in the 1993 EIR Appendix 5.1-1 list of plants observed on site by Interface (1991), Rindlaub (1992), and Bowland and Ferren (1992), but does not appear on the plant list appended to Ms. Miller's November 2001 report. The Final EIR documents Mulefat as part of the plant community identified as "Southern Willow Scrub" occurring in patches along drainages on site. The binder submitted by the applicant on April 4, 2002 contains, under Tab 18, a letter dated October 13, 1998 addressed by the office of the applicant's consulting landscape architect to the County Energy Division planner reviewing the Biological Enhancement Landscape Plan for the Arco Dos Pueblos project. The letter states on page 4: *"…(TABLE A)… 5. Suggested change incorporated. The project biologist, Sherri Miller, requests excluding Mule Fat from the Riparian mix because mule fat scrub is habitat regulated by CDFG, and we do not want to create a regulated habitat."* The revised version of the BELP dated November, 1998 does not include Mulefat in the riparian mix, but does include Mulefat in the Southern Willow Scrub mix. From the lack of identification of Mulefat in the November 2001 plant list, it is not clear whether the plant has disappeared from the site since the surveys included in the 1993 EIR were undertaken, or whether it may simply have been overlooked in the 2001 surveys.

mapped, nor were changes to the distribution or number of plants noted in the Miller report regarding site changes since project approval.

Staff requested that the applicant supply additional information about the Southern Tarplant on site, and conferred with the County Energy Division. The Energy Division's environmental monitor, John Storrer explained on request that he had noted a significant population of Southern Tarplant in bloom on the site when Arco abandonment activities were closing down in the summer of 1998. Mr. Storrer explained that he directed that the area be roped off to prevent disturbance to the plants, and that the applicant's consultants investigated the extent of the population and provided that information directly to the County staff.

Mr. Storrer indicated that the population was extensive and coincided almost exactly with the footprint of the former warehouse/loading racks. He sent an informal map of the area to County staff, and the map was provided to Commission staff.

Staff requested a site visit to evaluate the current location of the plants in the area that was discovered in 1998. Mr. Storrer and others accompanied staff (March 14, 2002 site visit), and Mr. Storrer prepared a responsive report, dated April 2, 2002, including a map of the general area of tarplant distribution. This map was eventually incorporated into a revised map prepared by the applicant.

Subsequently, the applicant at the request of staff prepared an iterative series of map revisions and provided supplemental information (the binder received April 4, 2002 and referenced previously, for example) concerning the locations and extent of Southern Tarplant on the subject site. In all, as shown on Exhibit 3, there are nine (9) locations now reported, ranging significantly in size of population from a few individual plants to as many as 4,500 individual plants in one location. The latter was the site discovered by Mr. Storrer in 1998, though the plant count was prepared by others (memorandum of Jackie Bowland to Sherri Miller dated October 6, 1998).

Thus, there is now substantial evidence to conclude that changed circumstances since the Commission's approval of Coastal Development Permit A-4-STB-93-154 exist on site with regard to the Southern Tarplant.

In summary, the changes consist of the significantly increased number of locations where the plant is known to exist on site (nine now compared with one known at the time of project approval), and the population size (largest and only known population at time of approval was 20 to 30 individuals in the middle of the proposed 18th Fairway, compared with as many as 4,500 plants in 1998 in the area presently proposed for a portion of the parking adjacent to the clubhouse, and a portion of the Par-3 Course north of the railroad, near Eagle Canyon). In addition, though not the same kind of changed circumstance, there is new (and accurate) information about the status of the Southern Tarplant as a California Native Plant Society List 1 (B) species. This is an indication that the native plant is considered to be rare, threatened or endangered. The

plant's sensitive status was not accurately reflected in the environmental review and subsequent project approvals.

As a result, the need for preserving the Tarplant was underestimated and measures that would avoid destruction of the plants were not fully evaluated. The mitigation measure implementation approved subsequent to project approval by the County allowed destruction of Tarplants and mitigation for this impact. The applicant's Biological Enhancement Landscape Plan (CUP condition 14/B8) originally provided for the mitigation of the loss of 20 - 30 plants (the number counted in the only population known on site at the time of approval) through seed collection, greenhouse growth of plants from resultant seeds (Matilija Nursery), and later transplantation of the cultivated plants to a designated mitigation site on the Arco project site (and reservation of some seed in case of poor survival/self reseeding). The mitigation requirement finalized in the applicant-prepared BELP only called for a 1:1 ratio (the EIR and the special condition did not set a ratio), and the number of plants to be mitigated was dependent on the number of plants *actually counted* in the year that grading commenced.

The applicant implemented seed collection in 1998 in anticipation of commencing construction shortly after obtaining final County approval that winter, and the issuance of the Coastal Development Permit from the Commission. The plants were grown successfully by Matilija Nursery, but when project approval was delayed, the applicant directed the destruction of the resultant propagated plants, and has repeated the cycle annually thereafter awaiting authorization to commence construction. The applicant explained to staff at the March 14, 2002 site visit that the plants grown by these means every year have been destroyed when each successive year since 1998 failed to yield construction authorization. Thus, genetic material from the donor populations has been lost instead of stored in the soil seedbank. [8]

Life History

Southern Tarplant is a summer-to-fall- flowering annual herb with spine-tipped leaves and abundant, small bright yellow flowers. The mature plant is of variable size, depending on the suitability of the environmental conditions present. Mature plants may range from a few inches in height to a diameter of approximately two feet (with a rounded overall form not unlike that of the tumbleweed). Southern Tarplant reaches its northern limit at the project site (Ellwood was formerly thought to be its northernmost range extension). It is also found in the Goleta Slough, on the UCSB Campus, and in very limited, localized distributions in other coastal southern California areas.

This annual plant's life cycle is one of lush germination after disturbance to a site, thick growth in the initial year or years, then failure of the plant to compete successfully with more aggressive colonizers. The successful initial years result in large seedset and the replenishment of the soil seedbank. At least some of the seeds of Southern Tarplant seem to remain viable for as long as decades, thus preserving the plant's genetic

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heritage and future growth potential through what amounts to a long period of relative dormancy once successional changes take over and send the plant back underground, literally, into the residual seedbank phase of its life cycle. When disturbance arises again, and competition is removed, the cycle repeats, perpetuating the Southern Tarplant.

According to staff report for the Bolsa Chica Coastal Program Land Use Plan Amendment No. 1-95/Implementing Actions Program, dated November 27, 2000, of only about 30 populations of Southern Tarplant known to remain in the Los Angeles Basin, most are small (less than 1,000 individuals) and at least 12 of those populations are threatened by development. At Bolsa Chica the population has fluctuated widely from year-to-year (consistent with observations at Arco Dos Pueblos). In 1991, no plants were found. In 1992, Southern Tarplant was again present and in 1993 around 545 individuals were observed. There were no detailed surveys until recently. In 1999 and 2000, consultants for Hearthside Homes conducted careful surveys of the entire Bolsa Chica Mesa. They counted 3,401 individuals in 1999, and 9,292 individuals in 2000.

- **Spatial and Temporal Patchiness is Normal for Southern Tarplant**

- **Soil Seedbank Importance**

Besides annual variations in number, the locations of the denser stands also varied considerably from year to year. These existing data indicate the extreme temporal and spatial patchiness in the distribution of this rare plant that must be considered in any protection plan. Fred M. Roberts, who was from 1991 to 1999 a botanist for U.S. Fish and Wildlife Service where he worked on rare plant issues, including issues related to Southern Tarplant, is quoted in the Bolsa Chica report explaining the significance of this variability as follows:

"This variability in response to climatic and other influences significantly increases a species' potential for surviving unfavorable times. Species may produce prodigious amount of seed one favorable year to weather a more typical 4-5 contiguous unfavorable years. Likewise, seeds with slightly different genetic codes will exploit slightly different germinating conditions. All this increases the vigor and potential of the species. The population that is in evidence one year may represent only a fraction of the total seed bank potential, both in number and in area. If conservation does not consider enough habitat for population dynamics, only a small fraction of the seed bank will be protected and this will significantly reduce the potential for species to survive hard times."

According to the Bolsa Chica report, there are only about five populations of Southern Tarplant in existence known to have over 8,000 individuals. Thus, the 1998 count in one location on the Arco Dos Pueblos site of over 4,500 individuals is clearly significant and indicative of the extent of soil seedbank reserves of tarplant genepool the 208-acre site harbors.

- **Range of micro-habitats, preservation of sufficient habitat**

The Bolsa Chica report emphasizes that simply preserving one portion of an area that had large numbers of individuals this year or any given year provides no assurance that the viability of the population will be maintained. It is important that the range of micro-habitats supporting the species be protected. It is also important to preserve sufficient habitat to insure that populations of pollinators are maintained. In the case of Southern Tarplant, pollination biology is unknown, however native bees are pollinators for rare saltmarsh species such as Saltmarsh Bird's Beak (Parsons, L.S. and J. B. Zedler, 1997, in Bolsa Chica report, *Factors affecting reestablishment of an endangered annual plant at a California salt marsh. Ecological Applications 7:253-267)* and Saltmarsh Goldfields (Ferren, Wayne, letter to staff ecologist John Dixon dated October 28 2000, in Bolsa Chica report, re: wetland edges, transitions, and upland habitats) making preservation of adequate habitat for pollinators doubly important.

LCP Policies and Provisions

Santa Barbara County's certified Local Coastal Program defines rare plant communities as Environmentally Sensitive Habitat by definition, without regard for mapping status.

LUP Policy 2-11: *All development, including agriculture, adjacent to areas designated on the land use plan or resource maps as environmentally sensitive habitat areas, shall be regulated to avoid adverse impacts on habitat resources. Regulatory measure include, but are not limited to, setbacks, buffer zones, grading controls, noise restrictions, maintenance of natural vegetation, and control of runoff.*

The LUP provides in Section 3.9.3. (Planning Issues) that "*Habitats are considered to be environmentally sensitive when they exhibit extreme vulnerability to disturbance or destruction from human activities. In Santa Barbara County, recreational uses, agricultural practices, and development pose the greatest threats to habitats because existing County regulations do not provide adequate protection.*

The LUP states on page 119: *While the (ESHA) designations reflected on the land use plan and resource maps represent the best available information, these designations are not definitive and may need modification in the future. The scale of the maps precludes complete accuracy in the mapping of habitat areas and in some cases, the precise location of habitat areas is not known. In addition, migration of species or discovery of new habitats would result in the need for designation of a new area. Therefore, the boundaries of the designations should be updated periodically in order to incorporate new data.*

In addition, the LUP states on page 120: *Most native plant communities are not designated on the land use plan and resource maps because they exist in so many locations throughout the coastal zone. Only major streams and wetlands are shown on the land use plan maps.*

The LUP further states on pages 119 and 120: Significant *habitat resources in the coastal zone which meet at least one of these criteria are designated on the land use plan maps. Environmentally sensitive habitat areas have been grouped into the following categories: (*dunes, wetlands, native grasslands, vernal pools, butterfly trees, marine mammal rookeries and hauling grounds, White-tailed Kite habitat, subtidal reefs, rocky points and intertidal areas, kelp beds, seabird nesting and roosting areas, **native plants***,* streams) … *Due to the limitations of mapping techniques and, in some cases, incomplete information on habitat areas, the following policies shall apply to development on parcels designated as a habitat area on the land use plan and/or resource maps and to development on parcels within 250 feet of a habitat area or projects affecting an environmentally sensitive habitat area.*

LUP Policy 9-1: *Prior to the issuance of a development permit, all projects on parcels shown on the land use plan and/or resource maps with a Habitat Area overlay designation or within 250 feet of such designation or projects affecting an environmentally sensitive habitat area shall be found to be in conformity with the applicable habitat protection policies of the land use plan. All development plans, grading plans, etc., shall show the precise location of the habitat(s) potentially affected by the proposed project. Projects which could adversely impact an environmentally sensitive habitat area may be subject to a site inspection by a qualified biologist to be selected jointly by the County and the applicant.*

Habitats found in the County and policies for protecting these habitats are listed below. These policies are in addition to existing State and Federal regulations which protect many species of plants and animals and their habitats.

Further, the LCP Coastal Zoning Ordinance provides that if newly documented environmentally sensitive habitat area, which is not included in the ESH Overlay District, is identified on a lot or lots during application review, then the provisions of Secs. 35-97.7. - 35-97.19. shall apply. (Sec. 35-97.3)

The Coastal Zoning Ordinance defines Environmentally Sensitive Habitat Area (ESHA) as: *Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

Thus, the LCP clearly establishes that the Southern Tarplant populations located on site are defined as ESHA. This is particularly true in light of the plant's accurate sensitivity status in the California Native Plant Society (CNPS) Inventory of Rare and Endangered Plants of California, which identifies the Southern Tarplant as a List 1(B) species (the only rarer status, List 1(A), indicates species that are generally extinct).

Therefore, as Southern Tarplant populations are ESHA, and newly discovered on site (since the time of permit approval), the provisions of Coastal Zoning Ordinance (CZO) Secs. 35-97.7 and 35-97.18 apply:

CZO Sec. 35-97.7 Conditions on Coastal Development Permits in ESH

A coastal development permit may be issued subject to compliance with conditions set forth in the permit which are necessary to ensure protection of the habitat area(s). Such conditions may, among other matters, limit the size, kind, or character of the proposed work, require replacement of vegetation, establish required monitoring procedures and maintenance activity, stage the work over time, or require the alteration of the design of the development to ensure protection of the habitat. The conditions may also include deed restrictions and conversation and resource easements. Any regulation, except the permitted or conditionally permitted uses, of the base zone district may be altered in furtherance of the purpose of this overlay district by express condition in the permit.

CZO Sec. 35-97-18. Development Standards for Native Plant Community Habitats.

Examples of such native plant communities are: coastal sage scrub, chaparral, coastal bluff, closed cone pine forest, California native oak woodland (also individual oak trees), endangered and rare plant species as designated by the California Native Plant Society, and other plants of special interest such as endemics.

…(2) When sites are graded or developed, areas with significant amounts of native vegetation shall be preserved. All development shall be sited, designed, and constructed to minimize impacts of grading, paving, construction of roads or structures, runoff, and erosion on native vegetation. In particular, grading and paving shall not adversely affect root zone aeration and stability of native trees.

Construction and Operations Impacts

The project will grade and remove most areas of Southern Tarplant now identified on the subject site. In addition, the largest population of plants (discovered in 1998, as described above) is established in a former oil and gas development area of the site that has residual contaminated soils (this is true in a number of areas of the site). The applicant received a Coastal Development Permit from Santa Barbara County for a proposed remedial action plan (RAP), which is currently pending on appeal to the Commission and will be scheduled for a future hearing. The RAP calls for the excavation and offsite disposal of soils in the primary tarplant population area, with the attendant destruction of the soil seedbank. These issues (soil cleanup) will be addressed separately when the appeals are considered.

The previous sections have established that Southern Tarplant is considered a rare, threatened, or endangered California native plant. Under the County's LCP, as stated previously, the plant's status renders the habitat supporting it ESHA. Special provisions of the Coastal Zoning Ordinance set forth above apply to development that could affect an ESHA.

Separate sections of this report discuss the adverse impacts upon the sensitive habitat and resources of the Eagle Canyon area that would be caused by the construction (and operation) of the Executive Par-3 Course, the 9 hole course at the eastern end of the site (Water quality impacts to Eagle Canyon Creek, California Red-Legged Frog, Tidewater Goby, and the impacts of constructing and operating the Par-3 course on the eucalyptus groves hosting fall and winter aggregations of Monarch butterflies). The Commission's findings in those sections required the imposition of Special Condition 3 (Revised Plans) to ensure that the unavoidable, significant adverse effects Par-3 Course construction would have on these environmentally sensitive habitats and species would be avoided. Revisions to the project layout are also required to protect the area where the largest populations of Tarplant have occurred on the site, which would otherwise be destroyed by the proposed parking lot and portions of the Par 3 Course. In addition, the section of the findings that addresses White-tailed Kite ESHA requires imposition of the condition for revised plans to buffer an area around an established nesting site. That area generally incorporates the second significant tarplant population, which is in approximately the same location documented in the 1993 EIR - in the proposed 18th Fairway. The third population is located on the western margins of Tomate Canyon, and minor adjustments to the project footprint appear sufficient to protect that population. By conserving primary populations in three areas of the site, better mitigation will result through capture of a wider array of microhabitats, populations will be more widely distributed for native pollinators (especially important because Southern Tarplant pollination is not well understood) and backup seed sources in the event of a population crash in one or more of the sites will exist.

As noted previously, Southern Tarplant numbers may fluctuate significantly in time and space, and the primary location of the plant's genetic material is in the soil seedbank that awaits future opportunities for growth, maturity, and new seed set. Thus it is useful to think about mitigation for impacts to the Southern Tarplant in terms of overall site impacts (grading and development) that will destroy the seedbank and development impacts related to the management of the site (landscaping, for example) and surface treatment thereafter that would inhibit Southern Tarplant germination and even if germination occurred, would impair the ability of the seedlings to mature and set new seed (germination in an area of managed turf would be an example). Thus the proposed grading of virtually all of the terraced areas where most tarplant is found on the site can be expected to eliminate both the plants and the plants' seedbank (future genebank), throughout the majority of the site.

John Storrer, County monitor for the Arco site and an experienced field biologist who has prepared environmental analyses of Southern Tarplant locations, writes in a report on the subject site's primary population that Southern Tarplant mitigation may be most usefully thought of in spatial terms.

To preserve healthy Tarplant populations on site over the long term, it is necessary to set aside the areas where Tarplants have previously been present, along with a buffer that will prevent disturbance of plants that are growing and will also preserve sufficient

seedbank to maintain the population. This can be accomplished by preserving the population in the area currently proposed for the Par-3 Course.

In addition, a Tarplant recovery plan is necessary to provide mitigation of tarplant populations and seedbank resources that will be permanently lost through soil remediation and grading for the golf course elsewhere throughout the site.

If the Commission had approved the proposed project with special conditions, a condition that requires the preparation of a Tarplant Area Restoration Plan (TARP) to provide for adequate mitigation of adverse impacts to Southern Tarplant and for the management of the tarplant conservation areas would have been required. The plan would have required preservation of tarplant ESHA, with mitigation of the loss of outlier populations only where such loss was minor compared to the preserved populations and otherwise unavoidable. It is not clear that there are any areas where the loss of southern tarplant on the subject site is necessarily unavoidable for revised plans to redesign the project footprint would likely protect most if not all of the southern tarplant populations on site.

In addition, the conceptual special conditions would have required the applicant's present Biological Enhancement Landscape Plan (BELP) to delete the use of herbicides in the tarplant mitigation areas. Because revised plans would have required the elimination of the Par 3 course, as discussed elsewhere herein, many of these concerns would have been addressed by that change. The chemical management methods described in the BELP are inconsistent with the requirements set forth in the applicable special conditions for protection and buffering of water quality in Eagle Canyon, and the protection of sensitive species (including Monarch butterfly aggregates that could be adversely affected by chemical management within the former Par-3 course area).

As discussed in detail elsewhere within this report, the applicant's Agricultural Turf Management & Integrated Pest Management Plan as submitted relies heavily on chemical management of the Par 3 Course that will be set aside as a tarplant restoration site and a buffer for the sensitive species and habitats in and adjacent to Eagle Canyon. The applicants have indicated that they may be rethinking chemical management on the site, but have not deleted any of the proposed chemical use authorizations contained in these management plans to date. Revised plans would also have required adjustments to the clubhouse parking footprint to avoid the primary population of the tarplant. Therefore, although there may have been ways to mitigate or avoid certain impacts to southern tarplant that could have been implemented through special conditions, particularly conditions for revised plans that emphasize avoiding tarplant populations, the project is inconsistent with the policies and provisions of the County's LCP for reasons set forth elsewhere in these findings and is therefore denied.

3.5 White-Tailed Kite

The white-tailed kites (*Elanus leucurus*) (formerly known as black-shouldered hawks or kites) are designated by Fish and Game Code section 3511 as a fully protected species and as such they cannot be taken at any time by permit or otherwise except for scientific research or to protect livestock. The U.S. Fish and Wildlife Service considers the species as a Migratory Nongame Bird of Management Concern. Such species are considered to be of concern in the United States because of documented or apparent population declines, small or restricted populations, or dependence on restricted, vulnerable, or declining habitats.

The mature white-tailed kite is a medium-sized, graceful, long-winged hawk. The kite hover-hunts, with wings held high and beating vigorously. When the white-tailed kite dives to take prey, the wings are lifted and the kite appears to float down.[9]

The adult white-tailed kite is approximately 14.5 inches long, with a wingspan of 40 inches. The sexes look similar, with white head, chin, throat, chest, belly and underwing coverts. The bird has a white underwing with primary feathers darkening at the ends, a white tail, and a pale gray back and upperwing with flight feathers darkening towards outer wing. Gulls and terns look similar in coloration but lack black shoulder and have a different bill shape.

Juvenile white-tailed kites have a brown head, nape and back and a white face, with brown streaks on white breast, dark upperwing with pale tips to the coverts and a dark band at tip of white tail.

The white-tailed kite primarily preys on diurnally (daytime) active small rodents, with peak foraging in the morning hours. The meadow vole provides the principal component of the white-tailed kite diet. Kites are not known to prey significantly on gophers according to the UCSB Museum of Systematics and Ecology. This may be due to the relatively small size of white-tailed kites compared to most other raptors - gophers are bigger than voles and more difficult for kites to carry, and gophers remain underground, feeding on plant roots, more than voles. Voles feed on seeds and small insects gathered above ground and are thus more readily obtainable prey for the white-tailed kites. Therefore, a critical component of the white-tailed kite's habitat is an adequate supply of voles, and thus the habitat that the voles themselves require for existence.

White-tailed kite nest-building occurs January through August, with pair bonding and initial tree selection in the earliest phase, followed by nest construction. Egg laying begins in February and probably peaks in March and April, though this species can double clutch and very occasionally even triple clutch. A single nest may have from 2 to 6 eggs. Peak fledging typically occurs in May and June with most fledging complete by October.

[9]Where not otherwise attributed, the general background information concerning white-tailed kites is from literature and online sources of the CDFG and the U.S. Geological Survey (USGS), and from the archival records of Santa Barbara County.

White-tailed kites have been observed to nest in a variety of native and non-native trees, including live oaks, Monterey pines, cypress, and Eucalyptus. The nests are generally 20 to 50 feet or so from the ground and somewhat cryptic. Groups of trees are much preferred over isolated trees. The surrounding trees not only place the nests out of direct view, but also provide perching opportunities for courtship and sentinel activities.

Although white-tailed kites range widely for prey, during nesting, adequate prey must be present close enough to the nest to supply not only sufficient food to raise their chicks, but also to allow the parents to remain nearby to guard the nest against predators--which include crows and other raptors.

Kite nests are constructed simply and sparsely of loosely arranged sticks and twigs. The strength of the nest depends primarily on the stability of the tree and branches holding the nest. Santa Barbara County records indicate that white-tailed kite nests constructed in eucalyptus trees have failed during summer windstorms, destroying nests located in the trees. Eucalyptus trees, which may satisfy some nest selection requirements for the kites, especially where more suitable alternative trees do not exist, often have relatively flimsy, breakable, and easily-moved branches that sway in high winds and thus render eucalyptus trees riskier for successful nesting. At the subject site, as discussed below, there is an abundance of potential eucalyptus trees for the white-tailed kites to choose from, yet they seem to select the mature cypress and Monterey pine trees on site in preference to eucalyptus trees. Dr. Dixon notes that of the approximately 985 trees present on site, some 326 are planned for removal, including 12 of the 15 trees used for nesting and related activities by white-tailed kites in 2002.

During the fall and winter, the birds have been known to roost communally in the Goleta Valley area of Santa Barbara County, although evidence recorded by UCSB researchers affiliated with the University's Museum of Systematics and Ecology shows that habitat fragmentation associated with increased urbanization and development has shifted kite roosting and nesting behavior and locations. Kites have been locally extirpated in some locations. No winter roosting surveys have been performed, although the applicants consultants observed foraging white-tailed kites during a January 1999 survey for California red-legged frogs on the subject site (SAIC, Thompson, 1999).

The Environmental Impact Report prepared for the Ellwood Beach- Santa Barbara Shores Specific Plan Area in 1992 noted that at that time the number of kites along the south coast area of the county had been consistently low during the previous five years relative to the mid-1970s. During the 1970s the population of the kite rebounded from near-extinction in the 1930s, reaching a high of 98 birds and a low of 23 birds, with a mean of 42 birds, in the annual Santa Barbara County Christmas Bird Counts sponsored by the Audubon Society between 1973 to1983. In the years from 1984 to 1988, 29, 21, 21, 18, and 18 kites were counted. UCSB research records indicate that

kites subsequently “evacuated” from the Goleta Valley during a prolonged drought (equated with low prey) and no kites resided in the Goleta Valley between 1989 and 1991.
Mark Holmgren, Curator of the Vertebrate Collection, UCSB Museum of Systematics and Ecology,[10] notes that kites are a mobile species, and while generally not migratory, may become nomadic and abandon a foraging or nesting area due to depletion of prey resources or in response to disturbance (Holmgren and Ball, June 6, 2002).

Data collected by UCSB indicates that approximately 30 to 35 individual kites, total, occupied the south coast area of the County in 2002, with an estimate of 6 occupied territories south of highway 101 and 6 or 7 occupied territories north of the highway.

The UCSB biologists estimate that the new information described below documenting the use of the ARCO Dos Pueblos site by at least two pairs of nesting white-tailed kites renders the site as perhaps the most important site for kites between Goleta and Gaviota, and is potentially as important as Ellwood Mesa and More Mesa as measured by the number of breeding pairs. (Holmgren and Ball, June 6, 2002).

Changed Circumstances

The Commission's present review of the proposed project is limited to full review of the project based on changed circumstances in the biological and physical environment of the subject site, or to new or revised development proposed (amendments), since the Commission approved the project in 1994. With regard to the white-tailed kite, changed circumstances exist because the fully protected species, previously not observed on the project site at the time of Commission approval of former CDP A-4-STB-93-154, has been documented nesting on the site and foraging there throughout the year.

Field studies of the site between 1999 and the present have documented that at least two pairs of white-tailed kites have been nesting on the site. Nesting by white-tailed kites had never been documented on the site at the time of the Commission's 1994 approval of the former permit for the presently proposed project. As discussed below, the presence of nesting pairs of white-tailed kites on the subject site is therefore evaluated herein as a changed circumstance.

Information about the White-tailed Kite at Time of Permit Approval

In the late 1800s, the White-tailed Kite was considered a relatively common raptor in Southern California; by the late 1920s, however, only ten pairs were known in Santa Barbara County area, and by the 1940s, the Kite was on the verge of extinction. Over the next 40 years the Kite population increased somewhat, but fluctuated significantly, reaching a peak in the mid-1970s and then declining to 797 (statewide count) in 1978 - four years before the Santa Barbara County LCP was certified. (Source: "A Biological

[10] The Museum’s data includes research on white-tailed kites in the Goleta Valley and the south coast of Santa Barbara County dating back to the mid-1960s.

Evaluation of More Mesa" completed by a team of biologists at UCSB and published August 31, 1982.) The Kite population in southern coastal Santa Barbara County fell from a high of 110 birds in 1975 to zero sighted in 1991 and 1992. 20 Kites were counted during the 1993/94 Audubon Christmas Bird Count, January 1, 1994. There is no evidence in the administrative record that any of these Kites were counted on the Arco Dos Pueblos project site.

At the time the applicant's original application was prepared and submitted to Santa Barbara County, the documents submitted by the applicant indicted that the White-tailed Kite had not been detected on the subject site. No additional information was presented to supplement these documents prior to the Commission's approval in 1994.

The applicant submitted a Biological Resources Analysis, dated June 28, 1991 (Revised October 15, 1991) prepared by Interface Planning and Counseling Corporation (Section IX of the application) that documented that the White-tailed Kite (also referred to as the Black-Shouldered Hawk or Kite) was not known to be present on the site. This report was subsequently incorporated into the FEIR, and the Interface Planning and Counseling Corporation staff provided extensive comments on the FEIR (and upon the Commission staff's subsequent staff reports for the Commission's consideration). Interface staff commented on the draft EIR (published in the Appendices to the FEIR, at page 6 of the comment letter supplied by Jacqueline Bowland, Senior Biologist, Interface Planning and Counseling Corporation, dated January 20, 1993:

" … (43) …Page 5.1-17: The text should include a general discussion of raptors that could occur on the site, given the protected status of these birds. During surveys conducted by Interface, few raptors were seen. These included soaring red-tail hawks, turkey vultures, and kestrals. ***No roosts or nests were identified on the project site."*** (Administrative record page 000829, emphasis added)

Ms. Bowland's comments continue, offering an explanation for the absence of any significant raptor use of the site:

"… Discussions with Paul Collins of the Santa Barbara Museum of Natural History of the habitat quality of this site indicates a possible lack of sufficient prey base for raptors in the project vicinity, as a result of ongoing cattle grazing and other agricultural land uses." (as above)

Staff has reviewed the administrative record for the original permit proceedings, which is comprised of over 5260 pages in 31 volumes. This staff review disclosed only one document (other than the above referenced application) in which the White-tailed Kite was expressly referenced. The document in the record for the original permit proceedings where the potential issue of the White-tailed Kite was discussed was in the "Final Environmental Impact Report for the Arco Dos Pueblos Golf Links Project, 92-FEIR-16" (FEIR) dated March 1993 (Administrative Record, 000280 et seq.).

The FEIR, prepared for the County of Santa Barbara's Resource Management Department, discussed and considered impacts to Biological Resources in section 5.1, commencing on pg. 5.1-1. In that section, raptors are mentioned generally on page 5.1-9 but the White-tailed Kite is not mentioned specifically:

"… Thirty sensitive bird species potentially could utilize one or more of the habitats on the project site. Most of these sensitive species are raptors and riparian habitat species that have become increasingly rare due to cumulative loss of habitats. The grasslands onsite provide some foraging habitat for raptors (owls, hawks, vultures, eagles), and the large trees (eucalyptus, tamarisk, etc.) provide perching and/or nighttime roosting sites. Raptors expected to frequent the site include turkey vulture (Cathartes aura), great horned owl (Bubo virginianus), barn owl (Tyto alba) red-tailed hawk (Buteo jamaicensis) and American kestrel (Falco sparverius).

The White-tailed Kite is notably absent from this list. In addition, nesting, by any raptor, is not mentioned in this section on the environmental setting of the project. Administrative record page 000364).

Commencing on page 5.1-16, the FEIR addresses sensitive fauna indicated on site based on springtime surveys, observations, species records for the Santa Barbara area. The White-tailed Kite is not identified as a sensitive species found on the site, although the section references Table 5.1-2 (which is only found in the Appendix to the FEIR) as providing "*a list of these sensitive species with their legal status."* The White-tailed Kite is listed among other birds in the referenced Table 5.1-2, however the table states that the Kite is only potentially present, and has not been observed on site.[11]

Thus all biological surveys, the final EIR, the comments on the EIR (including those of the applicant's consultants), and the record of decision underlying the CUP and CDP A-4-STB-93-154, performed and documented prior to the Commission's consideration of the coastal development permit, was negative for the presence of the White-tailed Kite.

Although the FEIR speculates that White-tailed Kites might potentially use the site, it does not analyze the impacts of the proposed project on White-tailed Kites nesting on the site. The FEIR stops short of considering any meaningful impact analysis concerning the potential effects of the proposed project specifically upon the White-tailed Kite--lacking in particular any consideration of the applicable policy requirements concerning Kite habitat set forth in the certified LCP, or providing any specific mitigation

[11] The FEIR section on "Sensitive Taxa - Fauna" (FEIR pg. 5.1-16, 000371) states that Table 5.1-2 (Appendices) provides a list of all sensitive animals expected to use the project site as residents, breeders, foragers, or migrants. The actual list is produced in Appendix 5.1-2 (001042), titled "Wildlife Taxa of the Project Area." White-tailed Kites are on this list, which is virtually the "kitchen sink" of species that might be present on the site, but not a list of species actually documented to be present. The Appendix species list shows that White-tailed Kites were *not* observed during any of the surveys upon which the FEIR was based.

measures to preserve nesting trees, provide buffers from disturbance for nesting trees, or address foraging habitat necessary to ensure nesting success.

Although the FEIR speculates that White-tailed Kites "may abandon the area", it also states that Kites had never been observed utilizing the site. The EIR states: "…It is expected that raptor populations in the project area would decline as a result of the reduction in foraging habitat and perch sites, and several species such as the black shouldered kite and red-shouldered hawk may abandon the area." (EIR, page 5.1-36). Furthermore, the FEIR sensitive species list indicates that White-tailed Kites might potentially use the site, but it does not specifically identify any potential for nesting by Kites at the site. Rather, the record reflects that White-tailed Kites were not nesting at the site in the early 1990s, or at the time of the County and Commission actions to approve the proposed project. Therefore, the current documented White-tailed Kite nesting on the site is a changed circumstance.

Recent White-tailed Kite Use of the Proposed Project Site

Two pairs of white-tailed kites nested on the site of the applicants' proposed development in the spring of 2002, during a raptor survey of the site undertaken by the applicants, and one nest produced 5 fledglings before the survey was terminated on May 30, 2002. Thus, it is now known that the species occurs as a year-round resident breeder at the Dos Pueblos site, and evidence of this has been documented by a variety of other qualified observers, including biologists from four consulting firms reporting for the applicants, County staff and environmental condition compliance monitors, UCSB biologists, and the Commission's staff ecologists.

At the time of the Commission's last hearing on the proposed project (June 10, 2002) the applicants consulting biologists (Pacific Southwest Biological Services) had just terminated a survey of white-tailed kite nesting on the subject site, after establishing conclusively that two pairs of white-tailed kites were successfully nesting on the site at the study's end. The westernmost of the two pairs fledged five nestlings and the outcome of the easternmost pair, still incubating eggs when the study ended, is unknown (no further observations were conducted).

Field biologists under contract with the applicants recorded incidental observations of white-tailed kites utilizing the site as early as January 1999, while surveying for the California red-legged frog (no previous surveys for raptors had been undertaken on the site to the knowledge of staff since the surveys prepared in 1991 and 1992 for the associated environmental impact report). The County's environmental compliance monitor, John Storrer (Storrer Environmental Services) recorded evidence of nesting on the site by a pair of kites in March of 2000 while undertaking routine condition compliance monitoring of ARCO activities. The Commission staff, including a staff ecologist, observed foraging kites on the site in September 2001, and on November 4, 2002. Subsequent to the September 2001 observations, the senior biologist for the applicants' consultant, Dudek and Associates, documented four adult kites perching and foraging on the site later the same month. Subsequently, in May of 2002, four

qualified observers (the applicants' consultant--Michael Evans of Pacific Southwest Biological Services, the County's environmental compliance monitor--John Storrer, and Mark Holmgren and Morgan Ball--from the UCSB Museum of Systematics and Ecology), confirmed nesting by two pairs of kites on the subject property. One nest produced five fledglings before the applicants terminated the on-site survey. A second pair of white-tailed kites was still actively brooding eggs when the survey was terminated but the outcome of the second nest was not documented.

The applicants submitted a report to the Commission dated June 7, 2002, titled “Dos Pueblos Golf Links White-Tailed Kite Nesting Survey” prepared by Pacific Southwest Biological Services, Inc. (PSBS) documenting the results of the raptor nesting survey that had commenced the previous month. The survey protocol is attached. The survey was undertaken on five of the six required days, one week apart, between May 9, 2002 and May 30, 2002.

The survey determined that the kites were nesting in Tree #127 (numbering conventions for trees arise from number assignments established in the applicants’ tree inventory plan; most trees discussed herein can be identified by their tree number on Exhibit 1A and in other attached documents, including the tree inventory) and Tree #67, both planned for removal under the applicants previous proposal. The PSBS report stated that these removals would not impact the white-tailed kites and that kites are not known to require the same nest site for subsequent nesting. A previous report prepared by Dr. Julie Vanderwier, Senior Biologist, Dudek & Associates, Inc., at the applicants’ request, titled “Raptor Survey for Dos Pueblos Golf Links,” dated November 26, 2001, confirmed the presence of four adult white tailed kites on the subject site during the September 20, 21, 2002 survey. Dr. Vanderwier did not undertake her survey during nesting season and therefore could not confirm active nests, but a map and field notes from her survey submitted at the request of staff the following spring contained notations about old nest site locations on the subject site.

PSBS biologists noted repeated use by white-tailed kites of specific clusters of trees for perching and as sentinel lookouts for nest protection, in support of the active nest sites. The numbers for these trees are documented in the respective reports (all reports associated with the white-tailed kite observations on site are attached)

A third consulting firm retained by the applicants concerning the white-tailed kites on site produced additional analyses and recommendations addressed below. Dr. Jeffrey Froke indicated in pertinent part (report dated October 10, 2002) in his report with regard to kite nesting selection, that:

> “…kites try something new each year, and should be offered attractive options…”

Dr. Froke prepared a report dated October 10, 2002 providing recommendations for landscape design and management practices that he believes will provide alternative nesting locations and enhanced prey populations to mitigate impacts associated with the applicant’s proposed project. Dr. Froke’s proposal does not redesign the course to

avoid the nesting and other trees identified as significantly used trees by Dr. Dixon, as discussed below. Thus, Dr. Froke's recommendations acknowledge the removal of the presently documented white-tailed kite nesting and associated trees, which are considered environmentally sensitive habitat areas, both under the Coastal Act and the County's certified Local Coastal Program, as discussed below.

Commission staff senior ecologist John Dixon, Ph.D., has evaluated Dr. Froke's recommendations in a memorandum report dated November 19, 2002 (hereinafter "report"—See Exhibits 1A and 13), and finds that the data collected to date demonstrate the use of the site by white-tailed kites for at least 4 years and, hence, probable use in the future if conditions remain the same. One or two nesting pairs are significant numbers at the local or county level, as verified by UCSB biologists with access to accumulated white-tailed kite population data collected in Santa Barbara County since the 1960s. Dr. Dixon concludes that it is important to try to maintain the reproductive output represented by these birds.

The Commission staff ecologist's report states that the proposed project places the reproduction of one or two pairs of kites at risk because it could potentially result in human disturbance that causes kites to avoid the foraging and nesting habitat that would remain at the site and the loss of 200 acres of foraging habitat and of many of the trees that have been, or potentially could be, utilized for nesting and perching by kites. In this regard, the report recounts the opinion of noted raptor experts that displaced raptors cannot simply move "somewhere else." Though this argument is often made, raptor experts consulted by staff point out that it is unlikely that displaced raptors will find new nesting or foraging territory that is not already being exploited by other competitors that are already established at the supposed "somewhere else." Thus, loss of raptor habitat inevitably equates with loss of the raptors that depend on the habitat.

Dr. Froke's proposes to develop nesting opportunities elsewhere on the subject site by means of certain landscaping and management treatments. Dr. Froke believes these measures will allow rodent prey populations to increase for the kites' benefit, thereby offsetting, in his estimate, the loss of nesting habitat and foraging that will inevitably result from the construction and operation of the golf course facilities as presently proposed. Dr. Froke would supplement tree plantings, and move mature trees to new areas (although such transplantings of mature specimen trees are often unsuccessful). Dr. Froke states that even if the trees are likely to die, they will become snags.

Snags offer raptor perches, but not raptor nesting sites for snags are too exposed to disturbance, the elements, and predation. In the case of the white-tailed kite, snags additionally lack the architectural elements of the fuller-canopied trees that typically cradle the simply constructed twig and stick nest the kite constructs.

There are at least three important considerations that must be taken into account by any plan to maintain the kites on site: 1) Provision of suitable nesting and perching habitat; 2) Protection from excessive disturbance, especially around the nesting habitat;

and 3) Provision of an adequate foraging base. In the 2002 nesting survey (Evans, 2002), it is stated that, "…suitable nesting trees, nearby perching trees, and foraging areas, both around the nest site and farther away are all key elements in the local survival of a pair of Kites." Dr. Froke addresses these issues and makes recommendations for a golf course management plan intended to provide the necessary resources.

For successful nesting to take place, suitable nesting trees must be present within the vicinity (from the kites' point of view) of adequate foraging areas. Based on a tree inventory prepared by Interface Planning and Counseling, there are about 985 trees on site, of which some 326 are planned to be removed, including 12 of the 15 trees used for nesting and related activities in 2002. Dr. Dixon states that most of the remaining trees probably are suitably close to foraging grounds and will continue to be so situated if Dr. Frokes' recommendations for native vegetation and rodent friendly management practices are followed and successful. However, there apparently has been no analysis as to the proportion of remaining trees that will be suitable for nesting (i.e., trees with appropriate height and configuration that are in appropriate clusters and adequately buffered from disturbance) after the development. As noted above, Dr. Froke recommends creating a number of nesting groves utilizing some existing trees and in some areas augmenting them by transplanting some adult trees and deeply planting others that would probably die but would act as snags, which might be used for perching but probably not for nesting. New trees would also be planted to maintain a suitable grove in the future.

The Commission ecologist's report also notes that it is important that nesting and foraging kites be protected from excessive disturbance. Nesting behavior, especially in the early stages, is most susceptible to disturbance. Experienced raptor biologists recommend anywhere from about 50 meters to 100 meters or more (100 meters equals approximately 300 feet), depending on the types of disturbance expected and on the individual biologist's personal experiences. Dr. Froke states that, "Nesting birds can be expected to tolerate low-frequency and non-disruptive activities to within 150 to 200 feet of their nest tree (better small grove)." Dr. Dixon states that at the applicants' Dos Pueblos site he recommends that 200-ft (61 meter) buffers be established around any existing nesting tree ESHA and any groves created and maintained as potential nesting sites as part of the golf course plan.

The Commission staff ecologists' report notes that there is also concern that golfing activities might disrupt foraging behavior and that kites might not utilize foraging habitat (existing or newly created) that is sandwiched between fairways (post construction). Dr. Froke presents evidence (observed also by Commission staff accompanying Dr. Froke during meetings at golf courses in Monterey County in October 2002) that white-tailed kites forage effectively in such areas on golf courses in the Monterey. According to Dr. evidence collected by Dr. Dixon for his report, white-tailed kites that forage or nest in close proximity to people tend to either have a genetic predisposition for tolerating the level of disturbance on golf courses or have habituated to golfing activities. He believes

that it is speculative whether kites would tolerate the amount of human activity that would result from the proposed golf course at this site.

Dr. Froke's proposal describes the proposed project as a "high end, low-round" course, which he defines as plus-or-minus 20,000 rounds per year. However, the proposed project description has always stated that the Dos Pueblos Champion Links Style 18-hole Golf Course would serve between 50,000 to 60,000 round of golf per year, open 350 to 360 days per year, and that the smaller Par 3 Executive Golf Course by Eagle Canyon, on the eastern end of the site would serve 20,000 rounds per year.

Dr. Froke may have misunderstood the proposed intensity of the 18-hole course as that actually associated with the intensity of use proposed for the 9-hole course alone. Thus, Dr. Froke's estimate that the 18-hole course, which affects the white-tailed kite habitat directly, will run 20,000 rounds per year, underestimates the intensity of that portion of the project by as much as 2/3 of the actual intensity of golf rounds the applicant proposes to provide on the 18 hole course. This means that the number of golf carts that would pass by a given point per hour (by a nesting tree, for example, as is presently proposed) would actually be three times greater than Dr. Froke has considered. In addition, the most sensitive season for the white tailed kite occurs during the February through August nesting season, which coincides with peak public use seasons for the golf course as well (there will not be an even distribution of golfers-per-hour on the course over the 350 to 360 operating days).

Dr. Dixon states that it is difficult to generalize from Dr. Froke's observations of the behavior of two pairs of kites, which were observed in Monterey, and notes that this adds to the uncertainty of maintaining kites at the site in the face of the planned development.

During staff observations on the Arco Dos Pueblos site in September 2001 and November 2002, the adult kites observed perching or foraging on the Dos Pueblos site maintained great distance from approaching humans, and flew when their perching trees were approached by the walking group of site visitors when the group was an estimated 200 feet or greater from the tree of concern. No kites foraged within 500 feet of the site visitors on either of the two referenced site visits noted.

Dr. Froke's proposal to encourage rodents through planting and maintenance treatments of roughs and out-of-bounds areas on the golf course is considered in Dr. Dixon's report. Raptor experts, and the literature on the subject consulted by staff note that kites in the Santa Barbara County area are vole specialists and that no data have been presented to demonstrate the degree to which restored native grasslands will support that species. The establishment of native vegetation may have a high probability of success, but the pattern of rodent proliferation that would follow is not well known, and only increases in voles would be helpful to the kites, according to the Commission staff ecologist's review of Dr. Froke's proposal.

Dr. Froke's recommendations also restrict the use of rodent bait poisons, recommending trapping, to be followed with fumigation methods of killing rodents if the golf course superintendent insists that such application is necessary to protect the greens and fairways from rodent damage. It appears that there is a potential for the implementation of serious efforts to increase rodents on the site, pursuant to Dr. Froke's objectives, to conflict with other objectives that would be typical for a golf course manager maintaining a championship level course. Thus, where Dr. Froke's recommendations state that certain actions (i.e., fumigation for rodents, application of various chemical management measures to maintain golf course playing quality) only be taken in a "bona fide emergency" to be determined by the golf course superintendent raises the concern that even well intended recommendations would be implemented by personnel charged with other priorities than fostering maximum potential rodent populations on the golf course property.

Dr. Dixon concludes that while Dr. Froke's proposals are worthy, and could produce benefits for white-tailed kites, the proposals are also speculative and untried and lack proof of performance. No published studies have been presented to support the theories underpinning Dr. Froke's proposals. In sum, Dr. Froke's plans are essentially experimental proposals and there is no ability to ensure that the experiments will succeed before the impacts upon the white-tailed kites would be felt by implementation of the proposed project. Thus, even with the implementation of Dr. Froke's full range of recommendations, white-tailed kites could still be driven away from the site, and potentially would not sustainably return.

Dr. Dixon additionally evaluated the documented patterns of use of the site by white-tailed kites to determine what portion of the site constitutes Environmentally Sensitive Habitat Area (ESHA) under the Coastal Act. Section 30107.5 of the Coastal Act defines ESHA:

> **"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.**

The County's certified LCP incorporates the definition set forth in Section 30107.5 as the guiding definition of ESHA in the LCP, as well. (certified Coastal Land Use Plan, at page 116). The LCP further states at LUP page 117 that:

> **"Habitats are considered to be environmentally sensitive when they exhibit extreme vulnerability to disturbance or destruction from human activities."**

The certified Coastal Zoning Ordinance (LCP Implementation Plan) specifically defines ESHA exactly as ESHA is defined in the Coastal Act, in the definitions section of the CZO on page 21:

> **"<u>ENVIRONMENTALLY SENSITIVE HABITAT AREA:</u> Any area in which plant or animal life or their habitats are either rare or especially valuable because of their**

special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments."

In addition, the certified LUP lists white-tailed kite habitat as a specific form of ESHA (at pages 119 and 120), and further states that provisions in the LCP that are protective of ESHAs are in addition to existing State and Federal regulations which protect many species of plants and animals and their habitats. Further, the County's certified Coastal Zoning Ordinance states that certain kinds of protected species and habitats warrant ESHA designation and protection wherever they are found (CZO at page 175):

Sec. 35-97.1. ESH Purpose and Intent. Within the County of Santa Barbara there are areas which contain unique natural resources and/or endangered species of animal or plant life and existing and potential development may have the impact of despoiling or eliminating these resources. The purpose of this overlay district is to protect and preserve areas in which plant or animal life or their habitats are either rare or especially valuable because of their role in the ecosystem and which could be easily disturbed or degraded by human activities and developments. The intent of this overlay district is to ensure that all development in such areas is designed and carried out in a manner that will provide maximum protection to sensitive habitat areas.

Sec. 35-97.3. Identification of Newly Documented Sensitive Habitat Areas. If a newly documented environmentally sensitive habitat area, which is not included in the ESH Overlay District, is identified by the County on a lot or lots during application review, the provisions of Secs. 35-97.7 – 35.97.19 shall apply.

The CZO further states that certain findings must be made if a proposed project that may affect ESHA is to be approved. These findings include the requirement that development that may affect white-tailed kite habitats be consistent with the following requirements. If the project cannot be found consistent with these requirements, it must be denied or given the minimum use consistent with the applicable development rights associated with the applicable land use designation and zoning standards. For the white-tailed kite, these requirements are set forth in Section 35-97.14:

Coastal Zoning Ordinance Section 35-97.14. Development Standards for White-Tailed Kite Habitats

1. There shall be no development including agricultural development, i.e., structures, roads, within the area used for roosting and nesting.
2. Recreational use of the roosting and nesting area shall be minimal, i.e., walking, bird watching. Protective measures for this area should include fencing and posting so as to restrict, but not exclude, use by people.
3. Any development around the nesting and roosting area shall be set back sufficiently far as to minimize impacts on the habitat area.

4. In addition to preserving the ravine plant communities on More Mesa for nesting and roosting sites, the maximum feasible area shall be retained in grassland to provide feeding area for the kites

Therefore, considering the ESHA associated with the use of the subject site by white-tailed kites, Dr. Dixon states (Exhibits 1A, 13):

"You have asked me to address the issue of ESHA on the site in the context of white-tailed kites. Section 30107.5 of the Coastal Act includes as ESHA those habitats which are especially valuable because of their role in the ecosystem. At Dos Pueblos, trees that are used for nesting activities by white-tailed kites, a California Fully Protected Species, clearly meet this part of the definition because suitable nesting trees and nearby perching trees are a necessary prerequisite for the successful reproduction of this sensitive species on the site. In other similar cases, the Commission has designated as ESHA trees that provide important habitat to individual birds of sensitive species; for example, a discrete grove of Eucalyptus trees used for nesting, perching, and roosting by several species of raptors at Bolsa Chica was designated ESHA. In addition, Section 35-97.14 of the Local Coastal Plan protects white-tailed kite roosting and nesting areas."

"Although there is no question that the some of the trees at Dos Pueblos provide an ecological service to white-tailed kites that qualify them as ESHA, identifying the ESHA footprint at the Dos Pueblos site is difficult for several reasons. First, trees potentially suitable for nesting and perching are scattered over much of the site and do not form discrete clumps or groves distant from other suitable tree habitat. Second, white-tailed kites often, perhaps typically, do not return to the same tree to nest each year. For example, Holmgren and Ball[12] found that the distances between successive nests in the Goleta Slough area varied from around 33 m to nearly 400m. On the other hand, kites have been observed to use the same tree in three successive years at the U. C. Santa Barbara campus[13]. Whether kites return to the same or different trees may be a function of the relative availability of suitable nesting trees at a given site. At Dos Pueblos, based on the kites' usual behavioral pattern, it appears probable that the exact trees that were used for nesting in 2002 will not be used in 2003. Some other trees, perhaps close by - perhaps distant, are more likely candidates. Finally, we have no knowledge of which trees or groups of trees have been most used historically. Designating all trees as ESHA would protect the important habitat with certainty, however it is difficult to justify in the case of particular trees for which there is no history of use. An alternative with a strong empirical rationale is to protect all trees with a history of use and adjacent trees. The adjacent trees are important because they are potential nest trees, they provide perches for critical activities related to courtship and nest protection, and they define a grove of trees, a configuration that is generally necessary to provide a suitable nest site."

[12] M.A. Holmgren & M. Ball. Distances between kite nests within and between seasons at a long-term territory. Data and maps submitted to the CCC on June 6, 2002.
[13] M. A. Holmgren, personal communication to J. Dixon November 8, 2002.

"In my opinion, it is appropriate to designate as ESHA all trees that fall within the smallest radius circles, centered on each documented 2002 nest tree, that contain all the immediately adjacent trees for which important use was documented. In addition, designate as ESHA all trees with white-tailed kite nests from previous years and those adjacent trees within the average radius observed in 2002. Finally designate as ESHA each of the more distant trees for which important use was documented in the 2002 nesting season. All trees within the circles around the observed nest trees should be given a 200-foot buffer; the distant trees with documented use should be given a 100-foot (30-m) buffer. These buffers are necessary to prevent abandonment of nests or interference with courtship, nesting, and foraging activities."

"During 2002, kites nested in Trees 67 (eastern pair) and 127 (western pair). Other trees were also used for important activities. For example, in a discussion of the observed use of trees near the eastern nest site (trees 81,82,83,113, & 117), the applicant's consultant wrote, "These trees seemed essential for performing courtship-related activities and for serving as sentinel perches...."[14] The western pair were also observed to use trees (128,149,153-155,157,187,&188) other than the nest tree in their routine activities. Nest-building activity was also observed in 2000 in Tree 83[15]."

"For nest tree 67, a circle with a radius of 256 feet (78 m)[16] would contain trees 81-83. For nest tree 127, a circle with a radius of 322 feet (98 m) would contain trees 128, 149, 153-155, & 157. So, in 2002 a circle with an average radius of 289 feet (88 m), centered on the nest tree, contained all the other trees with observed important use. Therefore, following the above protocol, the ESHA would include all trees within 256 feet of Tree 67, all trees within 322 feet of Tree 127, and all trees within 289 feet of Tree 83. In addition, ESHA would include trees 113, 117, 187 and 188. It is very probable that this protocol underestimates the number of trees that have actually been used by kites historically and underestimates the number of trees that would be used in the future in the absence of development, but it is based on existing data that documents use, avoids arbitrariness, and protects groups of trees."

"In certain instances, there also is an ecological basis and a Commission precedent for designating as ESHA foraging habitat for raptors. However, in the present case I don't think there is a strong basis for identifying which of the potential foraging areas within the region are most important for white-tailed kites or for establishing boundaries that delineate foraging ESHA. On the other hand, a significant amount of foraging area must be provided on site in order for the development to be consistent with section 30240(b) of the Coastal Act (*Coastal Act section 30240 (a) and (b) are also incorporated into the County's certified LUP as a guiding policy, on page 116*) which

[14] M.U. Evans. Dos Pueblos Golf Links, Goleta, Santa Barbara County, California, White-Tailed Kite Nesting Survey. A report by Pacific Southwest Biological Services to Culbertson, Adams, and Associates dated June 7, 2002.
[15] J. Storrer. Letter to K. Getler (S.B. County P&D Energy Division) dated June 3, 2002.
[16] Radii estimated by scaling distances from the tree map provided by the applicant.

requires that, “Development in areas adjacent to environmentally sensitive habitat areas...shall be compatible with the continuance of those habitat...areas.” In the above report, Dr. Froke recommends changes in the project design that would result in approximately 80 - 100 acres of the project site being managed in a way intended to promote robust populations of voles that are the major prey of white-tailed kites. If the management plan is successful and if the rodent habitats scattered about the golf course are all utilized by kites, the managed foraging habitats on the project site should support one or two pairs of white-tailed kites.”

On the basis of these comments, and the statements set forth in the balance of his November 19, 2002 memorandum, Dr. Dixon concluded that ESHA associated with the white-tailed kite nesting habitat is therefore that area illustrated in Exhibit 1A. Staff concludes that although many elements of Dr. Froke’s plans are commendable, and a step in the right direction, the plan still relies on 1) the elimination of much of the ESHA Dr. Dixon has identified and 2) impermissible mitigation for these impacts through methods that are speculative and amount to experimentation.

The applicants’ proposed project would construct much of the 16th, 17th, and 18th fairways and greens within the areas that are designed as ESHA by Dr. Dixon. These areas are used for roosting, sentinel perching, and nesting by kites. Paragraphs 1, 2, and 3 of the Coastal Zoning Ordinance, Sec. 35-97.14 (cited above), prohibits removal of the trees used by kites for roosting and nesting and construction of golf course fairways in these areas. Since the applicants propose development of golf course fairways in the identified kite roosting and nesting areas, the Commission finds that the proposed project is inconsistent with Section 30240 of the Coastal Act because it includes removal of ESHA. Section 30240 is incorporated into the County LCP as one of the “guiding policies” for the protection of land and marine habitats. (Santa Barbara County Coastal Plan, section 3.9.1, p. 114-116).

Almost none of the white-tailed kite ESHA identified by Dr. Dixon would remain intact if the golf course is developed as presently proposed. What would remain of the important trees and surrounding habitat utilized by kites would become fragmented, more visible and therefore more vulnerable to predators, and subject to disturbance from the golfing traffic that would pass by the white-tailed kite nesting habitat. At a frequency of up to 60,000 rounds of golf per year as proposed for the 18th fairway, this level of disturbance would be substantial. Thus, the proposed project, even with the implementation of Dr. Froke’s commendable, but experimental recommendations, is not consistent with the applicable policies and provisions of the certified LCP.

Staff had previously recommended that a number of measures be implemented through special conditions. These measures would require a redesign of the golf course layout to avoid the impacts that would be caused by the construction and operation of the 18th fairway. Since the publication of that recommendation, however, a second nesting pair of white tailed kites was identified on, and fledged 5 nestlings from, a site on the proposed 16th and 17th fairway areas. The applicants stated that even the extent of the previous staff recommendation would be unacceptable to them. They held that a

championship golf course must have the spectacular vistas and blufftop location of their proposed 18th fairway and that the revised plans recommended by staff could not, and would not be implemented. Thus, the applicants have indicated that they are not willing to modify the project to preserve the kite roosting and nesting area at the site. Because extensive changes would be necessary to conform the project to the LCP and because golf course projects and their design are both unique and specialized, the Commission declines to recommend changes or conditions at this time to bring the project into conformity with the LCP. Therefore, the Commission finds that the proposed project is inconsistent with the certified Santa Barbara County LCP. Accordingly, the Commission denies the proposed project.

3.6 New Wetlands

New, small wetlands have emerged on site since the project was approved by the Commission November, 1994. The footprint of these wetlands coincides with areas of former Arco oil and gas facility abandonment undertaken between 1996 and 1998. Disturbance, excavation and soil compaction, etc., have collected and retained moisture in the wake of the abandonment activities. The applicant secured a wetland delineation in consultation with the Army Corps of Engineers and the Natural Resources Conservation Service (the latter required because the site is classified as rangeland). For the most part, the amendments proposed by the applicant adjust the golf course design to avoid these wetlands. Some golf cart paths, tees, and greens may be closer than 100 feet buffer required by the County's LCP, and if the Commission had approved the proposed project, special conditions to revise the plans so that the necessary buffers were preserved and other measures typical of wetland protection standards would have been required. For other reasons, the proposed project is not consistent with the requirements of the certified LCP and therefore the project is denied and the special conditions to achieve these mitigation measures for wetland impacts that are not already addressed in the applicants' proposal will not be imposed.

The Commission notes that an appeal of ARCO's contaminated soil remediation proposal for the site will impact many of these small wetlands. That appeal is pending and will be heard at a subsequent hearing.

4.0 Alternatives

The Commission’s denial of this project does not eliminate all use of the parcels for the applicants (property owners). First, the applicants can redesign the golf course. The site is comprised of 208 acres, which can accept the footprint of a golf course, albeit not the presently proposed design, consistent with the environmental protections discussed in this report.

Staff considered the alternative of a revised plan that addressed many of the projects’ adverse impacts on coastal resources that are the subject of changed circumstances by deleting the Par 3 course, undergrounding and covering the reservoir, re-siting of the Clubhouse and parking somewhat, relocating tunnel undercrossings, and other

adjustments or revisions of the project design and layout. This alternative would have retained the 18-hole golf course, but the applicants stated that this alternative was unacceptable. Moreover, with the confirmation of white-tailed kite ESHA on the subject site rendered the modified alternative even less acceptable to the applicants because the 16th, 17th and 18th fairways would all require major redesign and substantial relocation, which also affects the design of the overall course. Nevertheless, as noted above, a redesign for an 18-hole golf course is available on the 208-acre site.

In addition the property presently owned by the applicants consists of 2 large agriculturally zoned lots and one 4-acre former in-holding lot. The lands also contain, according to the applicants, 23 of the Naples Townsite small lots. The County has included these lots in its LCP amendment that allows for County approval of a development agreement with the property owners of the small lots known as the former Naples Townsite.

The County is presently negotiating a development agreement in accordance with the provisions of the certified LCP with the adjacent landowner for residential use of the lots covered by the LCP on that adjoining property. Therefore there is an alternative for residential development on the applicants' property.

In addition to a redesigned golf course or residential use, all of the uses allowed in the County's LCP for property zoned Agriculture II (AG-II) could be considered for this site. These include the uses enumerated in the County's LCP allowed by CUP or CDP.

5.0 California Environmental Quality Act (CEQA)

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit to be supported by a finding showing the approval of the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission finds that there are feasible alternatives and feasible mitigation measures that while not proposed by the applicants would avoid or eliminate the significant adverse effects on the environment within the meaning of the California Environmental Quality Act of 1970 that the project as proposed will otherwise have. Therefore, the proposed project is not consistent with CEQA, the policies of the Coastal Act, or the policies and provisions of the certified Local Coastal Program (LCP) of Santa Barbara County. Therefore, the Commission denies the proposed project.